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Plaintiff RICHARD ZICCARELLO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

RICHARD ZICCARELLO, on behalf of
himself and all others similarly situated,

Plaintiffs,

vs.

SANYO ENERGY (U.S.A.)
CORPORATION; SANYO NORTH
AMERICA CORPORATION;
PANASONIC CORPORATION OF
NORTH AMERICA; and DOES 1-20,
inclusive,

Defendants.

Case No.

**PLAINTIFF'S CLASS ACTION
COMPLAINT**

CLASS ACTION

DEMAND FOR JURY TRIAL

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1 Plaintiff RICHARD ZICCARELLO (“Plaintiff” or “Ziccarello”), on behalf of himself and
 2 all others similarly situated, allege as follows:

3 **I. INTRODUCTION**

4 1. This case arises out of the manufacture and sale of photovoltaic modules
 5 (“SANYO Panels” or “Solar Panels”) manufactured and marketed by Defendant SANYO Energy
 6 (U.S.A.) Corporation (“Defendant” or “SANYO”) from approximately 2001 to 2010. This
 7 lawsuit applies at a minimum to all solar photovoltaic panel models within and similar to the HIP-
 8 xxxBA3 series, including but not limited to model numbers HIP-180BA3, HIP-186BA3, HIP-
 9 190BA3, HIP-195BA3, and HIP-200BA3 (“BA3 Series Panels”), and additional similarly
 10 designed and manufactured models within other series, possibly including but not limited to the
 11 HIP-xxxDA3 and HIP-xxxBA19 series (collectively, “SANYO Panels”).

12 2. A defect in the SANYO Panels, known as delamination, causes the SANYO
 13 Panels to progressively lose power output and to fail. This delamination defect and power output
 14 degradation causes serious and undisputed safety risks, including the risk of fire. The imminent
 15 safety risks associated with solar panel delamination including the objective risk of electrocution
 16 and fire hazard are well understood by experts in the solar industry and fully understood by
 17 SANYO and PANASONIC. The SANYO Panels cannot be repaired. The SANYO Panels must
 18 be removed and replaced.

19 3. SANYO has long been aware of the delamination defects alleged herein and has
 20 not only failed to disclose the defect to the owners of the SANYO Panels but also has actively
 21 withheld knowledge about the delamination defect and safety risks.

22 4. Once aware of the defect and safety hazards SANYO and PANASONIC
 23 developed and implemented a claims suppression strategy to depress and deny warranty claims
 24 and extract value belonging to Plaintiffs and the Class.

25 5. This has been accomplished in part by consciously refusing to inspect the failing
 26 SANYO Panels notwithstanding the express warranty promise that “Upon receipt of a claim,
 27 Sanyo or its designated representatives *shall* conduct measurements to determine the actual power
 28 of the Product(s).”

6. Not only did Defendants refuse to perform the power output measurements which the express warranty stated “shall be the sole determination for purposes of warranty settlement” (Sanyo Express Warranty) SANYO then unfairly and inaccurately represented that it was the *owner’s* responsibility to “perform the output measurements.” Defendants’ illegal practices deceived owners into believing that they had to generate “output measurements,” in order to process a warranty claim.

7. Given that the “output measurements” were extremely complex, and only capable of being performed by a solar expert or engineer, combined with the great expense to perform the tests, the claim-suppressing strategy was implemented, and accomplished its purpose of avoiding the cost to monitor and replace defective SANYO Panels.

8. Plaintiffs seek recovery on behalf of themselves and all owners who purchased the SANYO Panels or purchased properties on which the SANYO Panels were installed (the “Class Members”) for breach of express warranty, specific performance, violation of the provisions of the California and New Jersey consumer protection and unfair business practice statutes and unjust enrichment.

II. PARTIES AND VENUE

9. Defendant SANYO Energy (U.S.A.) Corporation (“SANYO ENERGY”) was a Delaware corporation from 1987 until 2009. SANYO Energy's principal place of business was located at 2055 SANYO Avenue, San Diego, California 92154, from approximately 1997 until sometime during 2008, including the times at which Plaintiff’s panels were manufactured and marketed. SANYO Energy merged with SANYO North America Corporation on July 1, 2009.

10. Defendant SANYO North America Corporation (“SANYO NA”) was a Delaware corporation from 1977 until 2015. During the entirety of the Class period, SANYO NA's principal place of business was located at 2055 SANYO Avenue, San Diego, California 92154. SANYO NA merged with Panasonic Corporation of North America on April 1, 2015.

11. Defendant Panasonic Corporation of North America (“PANASONIC NA”) is a Delaware corporation with its principal place of business located at Two Riverfront Plaza, Newark, New Jersey 07102, and is a wholly owned subsidiary of Panasonic Corporation, a

1 Japanese corporation based in Osaka, Japan.

2 12. Prior to the 2015 merger between defendant Panasonic NA and the Sanyo
3 Defendants, all three Defendants were subsidiaries of Panasonic Corporation. Panasonic
4 Corporation acquired SANYO Electric Co., Inc. ("Sanyo Electric") and its subsidiaries, including
5 both Sanyo Energy and Sanyo NA, through an incremental process between 2008 and 2011. In a
6 2008 press release, Panasonic Corporation announced its intention to acquire control of SANYO
7 Electric and its subsidiaries. In 2009, Sanyo Energy and Sanyo NA became consolidated
8 subsidiaries of Panasonic Corporation, when Panasonic acquired majority ownership of Sanyo
9 Electric and its subsidiaries. Over the next two years, Panasonic Corporation acquired complete
10 ownership and control of Sanyo Electric, making Sanyo Electric and its subsidiaries wholly
11 owned subsidiaries of Panasonic Corporation by April 2011. As recently as 2018, Panasonic
12 Corporation continues to identify Sanyo Electric as one of its Principal Consolidated Subsidiaries.

13 13. All subsequent references to "SANYO" herein are intended to refer individually
14 and/or collectively to Defendants SANYO Energy, SANYO NA, SANYO Electric and Panasonic
15 NA, as the context requires.

16 14. Plaintiff Richard Ziccarello is a resident of Whippany, New Jersey. On or about
17 October 24, 2006, Plaintiff purchased a solar energy system from The Solar Center, Inc. which
18 included thirty-seven (37) SANYO Panels (Model #HIP-200BA3) at a total cost of Fifty-Nine
19 Thousand Four Hundred Thirty-Five Dollars (\$59,435.00). After receiving a solar rebate from
20 the New Jersey Clean Energy Program ("NJCEP") of Thirty-Seven Thousand Seven Hundred
21 Forty Dollars (\$37,740.00), the net cost was Twenty-One Thousand Nine Hundred Ninety-Five
22 Dollars (\$21,995.00).

23 15. Plaintiffs are unaware of the true names and capacities of the Defendants sued
24 herein as DOES 1 through 20, and therefore sue these Defendants by such fictitious names.
25 Plaintiffs will amend this complaint to allege their true names and capacities when they are
26 ascertained. Plaintiffs are informed and believe that each of the fictitiously named Defendants is
27 responsible in some manner for the occurrences herein alleged and that the damages suffered by
28 Plaintiffs and the Class, were proximately caused by their conduct.

1 16. Plaintiffs are informed and believe that all Defendants, including the fictitious
2 DOE Defendants 1 through 20, were at all relevant times acting as actual or ostensible agents,
3 conspirators, partners, joint venturers or employees of all other Defendants and that all acts
4 alleged herein occurred within the course and scope of that agency, employment, partnership, or
5 enterprise, and with the express or implied permission, knowledge, consent, authorization and
6 ratification of their co-Defendants.

7 17. This Court has jurisdiction over this action pursuant to the Class Action Fairness
8 Act, 28 U.S.C. § 1332(d), because this is a class action in which (1) there are at least 100 class
9 members in the proposed class; (2) the combined claims of the proposed class members exceed
10 Five Million Dollars (\$5,000,000.00) exclusive of interest and costs; and (3) there is minimal
11 diversity as Plaintiffs and certain members of the proposed class are citizens of the State of New
12 Jersey and Defendant SANYO was a citizen of California and other states at the time of the sale
13 herein including Delaware.

14 18. This Court has personal jurisdiction over Defendant SANYO because Defendant
15 SANYO's principal place of business is located in California and Defendant has purposefully
16 availed itself of the privilege of conducting business activities in the State of California and has
17 maintained systematic and continuous business contacts within the State of California, thus
18 rendering the exercise of jurisdiction by this Court permissible under traditional notions of fair
19 play and substantial justice.

20 19. Sanyo's contacts with California related to Plaintiff's claims are extensive. On
21 information and belief, Sanyo manufactured the silicon ingots and wafers that were the principal
22 components of its HIT cells in Carson, California, from approximately 1994 until 2012 or later. In
23 1994, Sanyo acquired a majority interest in Solec International, Inc. ("Solec"), a photovoltaic
24 product manufacturer located at 970 East 236th Street, Carson, California 90745. In 2003, Solec
25 was absorbed by Sanyo Solar (U.S.A.) L.L.C. ("Sanyo Solar"), a California limited liability
26 company wholly owned by Defendant Sanyo NA. From 2003 until its cancellation in 2012, Sanyo
27 Solar's principal place of business was located at 970 East 236th Street, Carson, California
28 90745, where it continued to manufacture solar ingots and wafers for use in Sanyo panels.

20. In addition to manufacturing components of Plaintiff's panels in California, Sanyo sold these panels from California, and shipped them directly from California to Plaintiff's installer. Sanyo also extended its warranty to Plaintiff from California.

21. Furthermore, Sanyo originally designed and put into operation, in California, the warranty claim suppression scheme that Panasonic has continued to carry out following its merger with Sanyo. Sanyo continued to implement a systematic policy of warranty claim suppression while it was a subsidiary of Panasonic Corporation between 2009 and 2015.

22. Panasonic continued this warranty claim suppression scheme following its merger with Sanyo. While it was ostensibly managing Sanyo warranty claims, Panasonic deliberately shut down all avenues for submitting Sanyo warranty claims. Although Panasonic was aware that Sanyo's warranties provided two different California addresses for submission of claims, both of which are located in buildings that Panasonic continues to own and occupy, Panasonic stopped accepting claims at either of these addresses. Claims sent to either California address specified in Sanyo's warranties are now rejected and returned, with no indication of a forwarding address to which the returned claims can be resubmitted.

23. Panasonic also shut down Sanyo's website, the only other avenue of contact provided by Sanyo's warranty. Sanyo's residential customers are not aware that Sanyo merged with Panasonic, but could have been made aware of this by visiting www.sanyo.com, the address of Sanyo's website specified in its warranty. The Internet Archive documents the fact that, until early June 2017, visitors to the Sanyo website were automatically redirected to Panasonic's website. By June 11, 2017, however, Panasonic had deliberately extinguished this redirection. Since that date, and at all times relevant to Plaintiff's warranty claim, an attempt to visit www.sanyo.com leads only to the following error message: "Not Found; The requested URL /news/2009/12/21-1.html was not found on this server." There is no information at all that would lead a warranty claimant to Panasonic.

24. By deliberately shutting down this vital link, Panasonic took the final step in making virtually impossible what could have been a simple process of submitting Sanyo warranty claims to the successor company now ostensibly managing those claims. This and the other

actions described above were part of a deliberate scheme engaged in by both Sanyo and Panasonic, intentionally designed to thwart or eliminate warranty claims.

25. As a result of the merger between Panasonic and Sanyo NA, Panasonic assumed the liabilities of Sanyo NA, including the liabilities of Sanyo Energy assumed by Sanyo NA following their 2009 merger. Under California law, Panasonic's successor liability provides this Court with a basis for successor jurisdiction over Defendant Panasonic by virtue of the Court's personal jurisdiction over Sanyo and the imputation to Panasonic of Sanyo's extensive contacts with California.

26. Panasonic's own contacts with California provide an independent basis for personal jurisdiction. Not only does it continue to own and occupy the buildings in which Sanyo was formerly headquartered in both Cupertino and San Diego, California, but Panasonic also took deliberate action in California related to Plaintiff's claims when it intentionally foreclosed the receipt of Sanyo warranty claims at both of these addresses.

27. Venue is proper in this District pursuant to 28 §1391(b)(1), (c)(2) & (d) because Defendant's principal place of business is located in California and, Defendant has purposefully availed itself of doing business in the Northern District of California and has maintained continuous and systematic business contacts with the Northern District of California, including but not limited to having a warranty claims processing center in Cupertino.

III. FACTUAL ALLEGATIONS

A. The Latent Defect in the Solar Panels and Its Effects

28. Solar Panels are installed on racks which are mounted on the roof or, occasionally, racks installed on the ground.

29. The Solar Panels are connected together by electric cables to achieve a desired voltage output. The failure of a single SANYO Panel will cause the panels connected to it to reduce output or stop functioning as intended, resulting in a substantial reduction of the capacity of the SANYO Panels to produce electricity.

30. Because of the defect, all SANYO Panels relevant to this litigation have failed or will fail before the end of their expected useful life.

31. There is no way to repair the defect in the SANYO Panels and restore their promised and warranted functionality. The only means for addressing the failure of the SANYO Panels is to remove them and replace them with other solar panels.

32. SANYO has ceased manufacturing the solar panels that are the subject of this lawsuit. SANYO maintains no inventory of comparable SANYO Panels.

B. The Benefit of the Bargain When Purchasing SANYO Panels

33. The decision of Plaintiff, Richard Zicarello, and all Class Members, to purchase SANYO Panels involved principally two goals.

34. The first goal is to enter into a relationship with the solar manufacturer to purchase a solar system in order to save money on one's electricity bill over twenty years (20) past the date of purchase.

35. The second is to reduce one's environmental impact.

36. In the first instance, the decision to install a solar system was a major financial commitment and investment for Plaintiffs and all Class Members.

37. Plaintiff paid the net cost of Twenty-One Thousand Nine Hundred Ninety-Five Dollars (\$21,995.00). The purchase amount was a large financial commitment.

38. Plaintiff, like many Class Members, was attempting to reduce his future electric bills as part of his financial planning.

39. Investment in solar power systems requires that the consumer/homeowner pay "up front" for electricity that the manufacturer promises will be generated for the next twenty (20) years.

40. Plaintiff made the commitment to invest in a SANYO solar system, as did all Class Members, based on one fundamental warranty promise from SANYO - that the panels will perform for a minimum of 20 years, commonly known in the industry as the payback period. Plaintiff was advised that it would take between six to nine years before the purchase price of the panels would be returned through lower electricity bills.

41. SANYO represented its panels to be state of the art and charged premium prices for their solar panels.

1 42. In the absence of SANYO's promise of future performance for at least 20 years,
2 which was and remains the principal "benefit of the bargain," Plaintiff would never have
3 purchased a SANYO solar system.

4 43. Plaintiff trusted and relied on the representations of their installer, The Solar
5 Center, Inc., authorized by SANYO to make the representation, that the SANYO Panels were
6 "new technology and design" and of the "highest quality." Most importantly, SANYO was
7 providing a 20-year warranty which guaranteed the performance of the product, and the
8 justification for the substantial investment. Without that promise, Plaintiffs would never have
9 purchased the SANYO Panels.

10 44. Defendant Panasonic, who merged with SANYO in 2015 characterizes the
11 relationship between consumers and the manufacturer from whom it purchased its solar panels as
12 follows:

13 "Investing in photovoltaic modules is a long-term commitment.
14 Ideally a solar module has a life span of 25 years and over. That
15 makes the relationship with your PV manufacturer almost as durable
16 as the one with your life partner. In order to keep this relationship
17 successful and enjoyable, your PV manufacturer needs to be a partner
18 you can rely on. With 42 years of expertise and experience, Panasonic
19 Solar is a pioneer and technology leader with a unique track record in
20 reliability. <https://eu-solar.panasonic.net/en>."

21 45. Panasonic purports to advocate a "durable "successful" and "enjoyable"
22 relationship with individuals that invest in their solar panels. However, the warranty program,
23 now operated by PANASONIC, is a sham. As set forth below, neither SANYO nor Panasonic
24 can be relied on to respond to warranty claims Defendants and are actively engaged in strategy to
25 thwart and disrupt all residential warranty claims with the specific intention to save money and
26 deprive the owner of SANYO Panels the benefits of the warranty.

27 ///

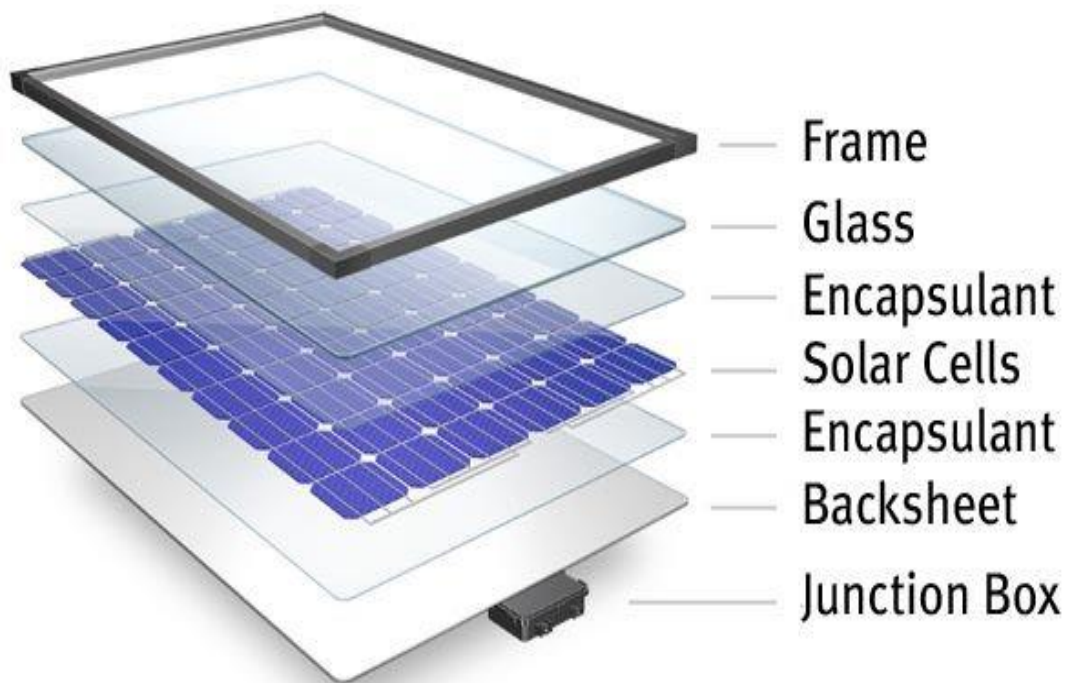
28 ///

C. The Delamination Defect

46. The SANYO solar panel signature defect, common to all SANYO Panels, purchased by Plaintiff and the Class, is known as delamination.

47. A solar panel consists of several layers of material that is vacuum sealed in order to prevent water and air from coming in contact with the cells which generate electricity, a condition essential to the successful operation of the panel.

48. The layers of the SANYO Panels are depicted below:



49. The SANYO Panels consist of five layers: glass, the plastic coating encapsulant (commonly known as EVA), solar cells, back sheet, and the back EVA plastic coating encapsulant.

50. Delamination is the detachment of the laminated components of a solar panel. Delamination occurs when the bond between the plastics and the glass on the front or back side of the panel separate. The photograph below depicts a delaminated panel from the Ziccarello solar array.



Image of Delaminated SANYO Panel in Plaintiff's Solar Array

51. Delamination destroys the safe and effective functionality of the solar panel because it allows air and moisture to creep inside of the panel in between the layers of the components of the solar panels. It is undisputed among the solar industry experts that solar panels must remain hermetically sealed to properly function. The symptoms of delamination are large white stains (discoloration) in the EVA sheet under the cover glass. This discoloration or whitening of the EVA is the signature manifestation of delamination and the presence of moisture in the panel.

52. Delamination is obvious to solar panel experts but Plaintiffs and average consumers are not aware how to identify delamination or of its significance.

53. Delamination is a condition that is continuous and progressive. Overtime, delamination, manifested by the white stains in the EVA, become larger and more propagated on the SANYO Panels. The delamination cannot be arrested or repaired. The panel's production will decrease in direct correlation to the increasing delamination. This condition will inevitably cause corrosion, degradation of power, safety risks and imminent failure. The consequences of delamination are undisputed among experts in the solar industry.

54. Ultimately, the delamination is due to weakening chemical adhesion of the EVA which degrade the capacity of the cell to produce electricity.

55. The delamination failures are systemic throughout Plaintiff's solar system and are caused by a common and universal defect in the SANYO Panels. In 2018, a routine maintenance inspection of Plaintiff's property by solar contractor Power Overhaul revealed Plaintiff's 37 panels have experienced delamination.

56. When delamination occurs, it will affect all of the cells in the section of the panel that the delamination occurs. Delamination in a single cell will cause the panel to lose power output.

57. All of the SANYO Panels have either experienced delamination failure or will experience delamination failure before the end of their useful life. The delamination causes the panels to perform under the minimum requirements and therefore, all SANYO Panels must be immediately replaced.

58. Since at least 2009, Defendants have been aware of the delamination defect in the SANYO Panels and of the resulting power output degradation and safety and fire hazards and have actively and strategically withheld that critical information from the owners of SANYO Panels and refused to warn owners of the known risks.

D. Safety Risk and Fire Hazard

59. Delamination causes serious safety and fire hazards. Delamination causes moisture, water and air to come in contact with the wires that conduct electricity. When moisture enters the panel from the edges of the module, it causes output power loss to the module and electrical hazards. Delamination can cause the electric current to leak to the frame.

60. Leaking electric current to the frame can be significant enough to "energize" the frame and cause it to conduct electricity. In this event, there is a shock hazard and imminent risk of electrocution to anyone who comes in contact with the solar panel.

61. If the back side of the panel delaminates, bare wires conducting electricity are exposed to the elements and are a dangerous safety risk.

E. Arc Fault Failure

62. In addition, delamination can cause the electric current to “arc”. This condition is known as an “arc fault failure”. Arc fault failures can generate temperatures in excess of 2000° - 3000°.

63. An “arc fault” is a high power discharge of electricity between two or more conductors. This discharge translates into heat, which can break down the wire's insulation and trigger an electrical fire. A common cause of arc faults includes faulty connections due to corrosion. Delamination is known to cause corrosion in the electrical circuitry of solar panels. Corrosion causes gaps or breaks in the electrical circuitry. Arc faults occur when the electrical current jumps the gap in the circuitry conductors. Because of the delamination on Plaintiff’s and Class Member’s panels, the conductors have been corroded and damaged and create an imminent safety risk and fire hazard.

64. Because dry leaves and other dry cellulose materials are often in contact with the surface of solar panels, this inevitably and commonly creates a serious risk of fire and must be eliminated. This condition also creates a serious safety risk to anyone near the panel when the arc fault failure occurs. Because the panels cannot be repaired, the only remedy is to immediately replace the panels. SANYO has failed to warn owners of the serious and dangerous risks.

F. Failure to Adequately Test before Sale

65. This systemic delamination is a result of, among other things, SANYO’s failure to adequately test its solar panels for long-term performance.

66. SANYO has universally represented and warranted that its panels will produce a minimum of 80% of the maximum output power stated in its specification for 20 years.

67. This representation is false because it was never based upon an adequate testing sample that would justify and support its unfounded promise of a minimum of 80% power output for a warranty period of 20 years. In the absence of that promise, Plaintiff and the Class, would never have purchased the panels.

G. SANYO Duty to Inspect SANYO Solar Systems and Refusal to Do So

68. The express warranty, which SANYO asserts is applicable in 2005-2006, provides, in part, as follows:

Upon receipt of a warranty claim, SANYO or its designated representative shall conduct measurements to determine the actual power output of the Product(s). SANYO's measurement shall be the sole determination for purposes of warranty settlement.

If such power loss is the result of a product defect, as determined by SANYO in its sole and absolute discretion, SANYO will supplement the output deficiency using one of the following remedies:

- a) SANYO may provide additional new or refurbished Product(s) to restore the deficient output; or
- b) SANYO may repair or replace the Product(s) with new or refurbished Product(s); or
- c) SANYO may refund the Customer the original Product(s) purchase price less depreciation. The refund will be pro-rated by the number of years and/or months from the date of purchase by the Customer."

69. As such, SANYO had and continues to have a duty to inspect and conduct power output measurements for all owners who make a warranty claim. Plaintiff submitted its warranty claim to SANYO on February 21, 2018. SANYO has refused, and continues to refuse to inspect Plaintiffs solar system, to conduct measurements "to determine the actual power output of the products."

70. Well before SANYO merged with Panasonic in 2015, SANYO made a corporate decision based on its own economic self-interest to treat warranty claims from residential properties and commercial properties differently. It is SANYO's universal practice not to pay for power output testing on residential properties. In contrast, SANYO will pay for power output testing on commercial properties but often does not even require such data from commercial

1 property warranty claimants. SANYO will replace solar panels on commercial properties without
 2 power output testing data based solely on visual evidence of delamination. This unfair and
 3 unlawful business practice almost without exception was adopted by Panasonic both before and
 4 after this 2015 merger.

5 71. Sanyo's decision in 2009 to not inspect residential properties with the same panels,
 6 is representative of SANYO's broader warranty suppression policy of refusing to inspect
 7 residential properties.

8 72. The refusal of SANYO to conduct the warranty inspections as expressly promised
 9 in the written warranty constitutes a material breach of the written warranty. Plaintiffs seek to
 10 compel SANYO to perform power output inspections on its solar system and on the solar systems
 11 of all Class Members.

12 73. On information and belief, an example of Sanyo's different treatment of
 13 commercial and residential properties was described by Sanyo itself, in a letter sent to PHOTON
 14 International Magazine in 2011 after being informed that an upcoming article would report that
 15 some Sanyo modules sold in in North America were experiencing short circuits caused by
 16 insulation degradation. Sanyo responded with a letter from Takashi "Charles" Hanasaki, dated
 17 March 3, 2011, offering "a brief outline of the situation." (An online copy of the text of Mr.
 18 Hanasaki's letter is attached hereto as Exhibit "A"). On information and belief, Mr. Hanasaki's
 19 position at this time was President of Defendant Sanyo NA's Solar & Smart Energy Division,
 20 located at 2055 Sanyo Avenue in San Diego.

21 74. Mr. Hanasaki's letter explained that, "[a]fter receiving the first complaint about an
 22 issue with a panel in commercial PV systems from a customer in autumn 2009, SANYO
 23 conducted a thorough investigation in the United States, where the problem was reported." The
 24 letter acknowledged that this investigation found that some modules "in commercial PV systems
 25 using HIP-xxxBA2, HIP-xxxBA3 (the Ziccarello's modules), and HIP-xxxBA5 HIT solar
 26 modules which were produced from 2002 to 2008, and sold only in North America . . .
 27 experienced insulation degradation."
 28

1 75. According to Mr. Hanasaki, Sanyo had “notified its immediate customers”; had
2 “conducted physical site evaluations and inspections”; and was “working with distributors to
3 identify any remaining uninspected commercial systems and to take proactive measures.”

4 76. In contrast to the “site evaluations and inspections” and other “proactive
5 measures” that Sanyo voluntarily undertook to protect its commercial customers, Sanyo ignored
6 residential owners of the same panels. Although Sanyo knew that residential installations of the
7 same “HIP-xxxBA2, HIP-xxxBA3, and HIP-xxxBA5 HIT solar modules . . . produced from 2002
8 to 2008, and sold . . . in North America,” were subject to the same insulation degradation defect,
9 Sanyo made the decision not to inspect residential properties for this defect.

10 77. According to Mr. Hanasaki’s letter, if the HIP-200BA3 panels purchased by
11 Plaintiff in 2006 had been installed on a commercial property, the very panels on Plaintiff’s
12 property, they would have been inspected by Sanyo in 2009, as part of its “thorough investigation
13 in the United States” of the insulation degradation problem discovered in these panels. The only
14 reason offered by the letter for failing to inspect residential installations of the same panels, or
15 even simply to notify their owners of the existence of the insulation degradation problem, was
16 that “[w]e have not had any reports of similar issues from our customers with residential PV
17 systems.”

18 78. The refusal of SANYO to conduct the warranty inspections as expressly promised
19 in the written warranty constitutes a material breach of the written warranty. Plaintiff seeks to
20 compel SANYO to perform power output inspections on its solar system and on the solar systems
21 of all Class Members.

22 79. The refusal of SANYO to perform the promised power output measurements has
23 far-reaching consequences. These consequences are known to SANYO and are intentionally
24 designed to block Plaintiff’s promised recovery and rights under the written warranty.

25 80. First of all, only a highly qualified and trained solar expert is capable and
26 competent to conduct power output measurements on solar panels.

27 81. The measurement of the power output consistent with “standard test conditions”
28 set forth by the warranty requires the use of a highly sophisticated and expensive testing

1 equipment. The tests must be performed in a laboratory environment, necessitating the removal
2 and reinstallation of the panels.

3 82. The time and expense necessary to conduct measurements to determine the actual
4 power output of SANYO Panels is prohibitively expensive for Class Members or their installers
5 and would likely exceed the cost of an entire new solar array.

6 **H. SANYO's Knowledge and Suppression of the Defect in the Solar Panels**

7
8 83. Plaintiffs and other SANYO customers and Class Members have reported failures
9 of the SANYO Panels to their installers and to SANYO directly. Installers also reported failures
10 directly to SANYO when submitting warranty claims on behalf of their customers.

11 84. SANYO customers have returned numerous SANYO Panels with power output
12 failures. The appearance and condition of every returned SANYO Panel was essentially identical
13 and was immediately understood by SANYO engineers to be caused by the delamination defect.

14 85. On information and belief, SANYO engineers were instructed by their superiors to
15 investigate the failures. SANYO engineers investigated the failures and regularly reported their
16 findings to their superiors both orally and in writing. SANYO engineers determined the cause of
17 the failures to be delamination of the panel. On information and belief, SANYO has determined
18 the cause of the delamination.

19 86. On information and belief, SANYO tested the failed panels which proved that the
20 SANYO Panels were defective by virtue of the delamination which in turn created safety risks
21 and fire hazard. SANYO engineers quickly understood that the power reduction defect could not
22 be repaired and that the delamination was continuous and progressive and would cause the panels
23 to fail before the end of their useful life.

24 87. On information and belief, these findings were brought to the attention of
25 numerous SANYO employees, including senior executives and Vice Presidents of manufacturing,
26 sales and marketing, and engineering departments. The refusal of SANYO to disclose the
27 delamination defect or to conduct power output measurements of the panels of residential owners
28 who submit warranty claims constitutes unfair and unlawful business practices which, in turn,

caused the failure of the essential purposes of the warranty, namely, long term and safe production of electricity.

88. Although SANYO knew that the SANYO delamination defect represented a safety risk and would ensure that consumers would not receive the benefits of ownership promised by SANYO, SANYO did not disclose the defect to its distributors, sellers, installers or others in the chain of distribution. Instead, SANYO actively concealed the defect and sold thousands of defective Solar Panels to consumers.

89. This unfair practice by SANYO further places members of the Class at risk of property damage and personal injury because SANYO does not take action to replace the SANYO Panels promptly.

90. SANYO has a warranty database that evidences SANYO's comprehensive knowledge of the failures of its solar panels and the commonality and similarity of the failures.

I. Additional Provisions of the SANYO Warranty

91. SANYO issued a written warranty (the "Warranty") for the SANYO Panels which, although never received by Plaintiffs and the Class, states that: (1) the SANYO Panels will be "free from defects in materials and workmanship" for two (2) years (the "Workmanship Warranty"); and (2) the SANYO Panels will produce at least ninety percent (90%) of their minimum peak power output for a period of ten years and at least eighty percent (80%) for 20 years from the date of installation (the "Power Warranty").

92. The Warranty states as follows:

"1. Limited Product Warranty – Two Year Repair or

Replacement. SANYO warrants the Product(s) to be free from defects in materials and workmanship under normal application, installation, use and service conditions. If the Product(s) fails to conform to this warranty, SANYO will, at its sole option, either repair or replace the Product(s)."

The Warranty further states:

Table 1. Minimum Output Power Allowances

Period	Remarks
At the Time of Purchase	Minimum Power (Pmin) = 90% of the nominal maximum output power stated in specification
0-10 years	90% of the minimum power at the time of purchase
10-20 years	80% of the minimum power at the time of purchase

Note: Minimum output power is measured at an optimum voltage under standard test conditions of 1000W/m² at a cell temperature of 25°C

93. Because the use of EVA to encapsulate the panels is virtually industry wide, the failure of the SANYO encapsulant is caused by a defect in materials in workmanship and not design.

94. The Express Warranty falsely represents “the products to be free from defects in materials and workmanship under normal application, installation use and service conditions.”

95. The Warranty is enforceable by “(i) original and user purchaser... or any subsequent owner of the location, a subsequent title holder of the product...” Plaintiffs are an original end user purchaser of the SANYO Panels. Plaintiff is thus entitled to enforce the provisions of the Warranty.

96. The Warranty provides that: (1) in the event of a breach of either Warranty, SANYO may repair or replace the “Products” with new or refurbished product; or either (2) repair or replace the SANYO Panels or provide additional new or refurbished product to restore deficient output; or (3) refund the purchase price.

97. Furthermore, because SANYO no longer makes the product and there are no replacement products with comparable dimensions or color available in the marketplace, SANYO cannot in fact replace the panels with SANYO Panels. Nor is it possible for SANYO to repair the SANYO Panels.

98. Accordingly, the remedies offered by the Warranty fail of their essential purpose, *i.e.*, to put the purchaser in the position he or she would have enjoyed but for the breach of the Warranty. The only effective remedy for breach of the Warranty is to remove all existing SANYO Panels and replace them with suitable solar panels manufactured by others, or pay Plaintiff and the Class the cost to remove and replace the panels together with all damages related

1 to lost power.

2 99. The Warranty also purports to limit the rights and remedies of purchasers of the
3 SANYO Panels described as ‘the product’ in the following particulars:

- 4 a. SANYO disclaims responsibility for “the costs of any on-site labor
5 and any costs associated with the removal, packaging,
6 reinstallation, transportation and related costs and fees of [the
7 SANYO Panels] or any components thereof for service;”
- 8 b. SANYO purports to disclaim any implied warranties, including the
9 warranties of merchantability and fitness for a particular use;
- 10 c. SANYO purports to disclaim responsibility for “incidental,
11 consequential or special damages, loss of use, loss of production,
12 or loss of revenues for any reason whatsoever.
- 13 d. The Warranty purports to limit SANYO’s “maximum liability
14 under any warranty, expressed, implied, or statutory, or for any
15 manufacturing or design defects” to “the purchase price of the
16 product;”
- 17 e. The Warranty purports to provide that it “shall constitute the only
18 warranty applicable to the product.”

19 100. Each of these purported limitations and exclusions (the “Warranty Exclusions”) is
20 unconscionable and unenforceable against Plaintiffs and the Class. The Warranty Exclusions
21 were not bargained for by SANYO and its customers, but were imposed unilaterally by SANYO.
22 The Warranty Exclusions are unfair in that they are outside the reasonable expectations of the
23 parties thereto, deny consumers an effective remedy and purport to limit the rights of consumers
24 in ways that are unenforceable under relevant state and federal law.

25 101. The Warranty Exclusions are also unfair in that they purport to require owners to
26 pay for the labor cost to replace the defective panels.

27 102. The Warranty Exclusion’s purported: (1) limitation of SANYO’s liability to the
28 cost of the SANYO Panels; SANYO disclaims responsibility for “the costs of any on-site labor

1 and any costs associated with the removal, packaging, reinstallation, transportation and related
2 costs and fees of [the SANYO Panels] or any components thereof for service;”

3 103. SANYO purports to disclaim any implied warranties, including the warranties of
4 merchantability and fitness for a particular use;

5 104. SANYO purports to disclaim responsibility for “incidental, consequential or
6 special damages, loss of use, loss of production, or loss of revenues for any reason whatsoever.

7 105. Similarly, the increased cost of electricity arising from the failure of the Solar
8 Panels could easily exceed the cost of the SANYO Panels themselves. The provision purportedly
9 eliminating the right to recover the cost of replacement electricity is especially unfair in light of
10 SANYO’s prominent claim that installation of the SANYO Panels will reduce or eliminate
11 electricity bills.

12 106. The unfairness of these limitations in remedy are reinforced by unenforceable
13 provisions of the Warranty stating that it is the exclusive remedy for breach of warranty or for
14 manufacturing or design defects and the purported exclusion of implied warranties. In fact,
15 Plaintiffs and the Class have substantial rights and remedies available to them both for breach of
16 implied and express warranty and for redress arising from the defective nature of the SANYO
17 Panels, which SANYO cannot lawfully preclude them from asserting.

18 107. The provisions described above both individually and in combination, are
19 unconscionable, deprive Plaintiffs and the Class of any effective remedy for breach of SANYO’s
20 obligations to them and cause the warranty to fail of its essential purpose. In addition, because
21 Plaintiffs were never provided a warranty none of the limitations apply.

22 **IV. PLAINTIFF’S INDIVIDUAL ALLEGATIONS**

23 **A. ZICCARELLO FACTS**

24 108. For many years, Mr. and Mrs. Ziccarello had been interested in solar power as a
25 way to reduce their electric bills, save money, and benefit the environment.

26 109. The Ziccarellos entered into a written contract with The Solar Center, Inc. on or
27 about October 24, 2006 for the purchase and installation of their solar system on their family
28

1 residence.

2 110. The Solar Center, Inc. installed 37 SANYO panels on their home, model number
3 HIP-200BA3.

4 111. In or about February, 2018 Plaintiff had routine maintenance performed by Power
5 Overhaul on their SANYO Panels. They were informed that their SANYO Panels were
6 delaminating and not properly functioning.

7 112. All of the SANYO Panels that failed at the Ziccarello's residence were due to the
8 same systemic and universal delamination defect, none of which was known to Plaintiff until they
9 were informed by Power Overhaul.

10 113. After Power Overhaul informed Plaintiff that there was a problem with some of
11 their panels, Power Overhaul processed a warranty claim with SANYO on behalf of the
12 Ziccarellos. The claims process was unreasonably slow.

13 114. SANYO refused to conduct output measurements required by the warranty,
14 SANYO required the Plaintiffs to secure their own solar panel installer to provide information to
15 SANYO. SANYO ignored and rejected Plaintiff's robust evidence of delamination in their solar
16 panels and rejected Plaintiff's warranty claim, save for one panel of the 37 panels subject to the
17 warranty claim. Trevor Tufts, the Panasonic warranty person, refused to pay Power Overhaul for
18 power testing. SANYO refused to perform any power output testing of any sort on the Ziccarello
19 property. The SANYO report denying the Ziccarello claim is attached hereto as Exhibit "B".

20 115. Throughout the time that Plaintiff pursued his warranty claim with SANYO,
21 Plaintiff was unaware that the SANYO express warranty specifically required that SANYO, and
22 not Plaintiff, conduct the output measurements and adjust the claim, none of which was disclosed
23 by SANYO to Plaintiff or to Power Overhaul.

24 116. Additionally, throughout the time of Plaintiff's pursued his warranty claim,
25 SANYO was aware that Plaintiff's panels were experiencing delamination in that Plaintiff's solar
26 maintenance contractor, Power Overhaul, had provided dozens of photographs to SANYO
27 depicting delamination throughout many of Plaintiff's panels. SANYO was further aware that
28 Plaintiff's panels needed to be replaced because of the safety risk and fire hazard.

117. SANYO has refused to pay for damages for loss of power production or the cost of investigation of the defective panels. Plaintiffs had to pay the sum of approximately Five Hundred Fifty Dollars (\$550.00) to Power Overhaul as labor costs to inspect and to replace the one replacement panel provided by SANYO. The Ziccarellos have incurred increased electricity bills that they would not have incurred if their system were functioning properly. Despite repeated requests, SANYO has refused to replace the defective system.

118. Plaintiff is not an expert in warranty law, solar panels or solar electricity and has no technical background about solar energy.

119. The solar panels that Solar Center Inc. sold to Plaintiff were Sanyo panels, model number HIP-200BA3. The solar system consisted of 37 SANYO Panels and was installed by The Solar Center, Inc. These Sanyo solar panels purchased by Plaintiff are covered by a 20 year power warranty. A true and correct copy of the warranty is attached hereto as Exhibit "C." The warranty promises that during years 1 through 10, the panels will produce at least 90% of the "minimum power" stated in Sanyo's "specification" and that during years 11 through 20, the panels will produce at least 80% of the minimum power.

120. The Warranty further provides in Section 2 that:

Upon receipt of a warranty claim. SANYO or its designated representative shall conduct measurements to determine the actual power output of the Product(s).

121. The Warranty only provides two conditions for obtaining warranty performance. Pursuant to Section 5 of the Warranty, warranty claimants are required to (1) notify Sanyo at a specified address in San Diego, California or online at www.sanyo.com; and (2) provide evidence of purchase.

122. On February 21, 2018 Matthew Alestra, President of solar contractor Power Overhaul, submitted a warranty claim to Panasonic on behalf of Plaintiff. The email accompanying the warranty claim stated: "There are 37 modules on the roof, all showing signs of delamination. Several units are causing ground faults." The email also stated: "Homeowner is asking for a replacement of all 37 modules." True and correct copies of emails exchanged

1 between Panasonic and Power Overhaul between February 21, 2018 and April 13, 2018 are
2 collectively attached hereto as Exhibit “D.”

3 123. The warranty claim was also accompanied by at least four photos of each of the 37
4 modules. (In some places, the documents reference six photos each.) Panasonic required that
5 photos be submitted with the warranty claim. Power Overhaul expended sixteen hours to obtain
6 these photographs which required removal of the roof-mounted panels so that each panel could be
7 photographed, front and back. Panasonic did not compensate Power Overhaul for this work.

8 124. On February 21, 2018, Panasonic representative Trevor Tuft confirmed by email
9 that Panasonic had received Plaintiff’s warranty claim. (See Exhibit “D”)

10 125. After Panasonic received Plaintiff’s warranty claim, Panasonic failed to respond to
11 communicate with Plaintiff or Power Overhaul for nearly a month thereafter. When Panasonic did
12 finally communicate with Power Overhaul, on March 16, 2018, Trevor Tuft stated that he “still
13 need[ed] to go through the photos one module after the other[.]” (See Exhibit “D”) Tuft then
14 mischaracterized the warranty claim as being based merely on modules “causing ground faults”
15 while ignoring that all of the panels were delaminating. Tuft further stated:

16 [I] is not to say that I don't think they are ground faulting (I don't
17 know yet), rather that I would very much suggest submitting
18 electrical data for these modules before I submit this claim for
19 review. I know for a fact that if I submit this claim now, with what
20 you've submitted so far, the QA team will ask for the electrical
21 data.

22 126. Alestra promptly responded by email that he had:

23 [S]pent 16 hours onsite gathering the (6) photos of each module
24 that Panasonic requires for warranty claims. Considering we don't
25 get compensated for submitting these warranty claims, we did not
26 spend any more time on site gathering electrical data. We can
27 definitely go back and get it, if Panasonic would be willing to
28 cover our costs.

127. Alestra further stated that the panels “are failing. The backsheets are falling off
and the modules are delaminating. I cannot imagine that it is electrically safe to leave these
modules on the roof.” (See Exhibit “D”)

128. Tuft’s email to Alestra in response completely ignored Alestra’s request that

1 Panasonic pay for Alestra to perform the electric testing. Although Tuft had previously indicated
 2 that electrical testing would be needed to evaluate the claim, he now responded that “If that is the
 3 case, then I will just prepare what I have now for review.” (See Exhibit “D”) Panasonic did not
 4 perform power measurement testing and did not pay for Power Overhaul to do such testing.

5 129. Although Tuft indicated that he would review the claim with what he already had,
 6 another two and a half weeks passed with no response from Panasonic. On April 5, 2018, Alestra
 7 sent another email inquiring about the status of the claim. (See Exhibit “D”)

8 130. On April 13, 2018, Tuft finally responded to the warranty claim. Panasonic
 9 agreed to provide one panel and denied the warranty claim as to the other 36 panels. In denying
 10 the warranty claim as to all but one panel, Tuft stated: “Since we only have photographs of the
 11 modules with no electrical data our judgement is limited.” (See Exhibit “D”).

12 131. Power Overhaul replied by stating that it “had many customers, distributors, etc.
 13 pay a premium for Sanyo product as it was perceived to be a premium product with premium
 14 service. I most certainly don't believe that to be the truth today.” Power Overhaul stated that it
 15 had “never seen catastrophic material degradation being handled like this.”

16 132. On April 13, 2018, Tufts responded on behalf of SANYO that: “The warranty for
 17 these modules is not void. If we receive more data to base our judgement off of, we would be
 18 happy to prepare another report that includes that data.” Tufts still did not advise that SANYO
 19 was contractually required to conduct the testing.

20 133. Tufts suggested that SANYO send one replacement panel and “then while your
 21 team is out replacing the module you take the opportunity to conduct amperage readings on any
 22 amount of modules you wish. ***Please understand that the warranty is per-module, so we will***
 23 ***only be able to provide replacements for those we have data for.***” (emphasis added)

24 134. Tuft’s rejection was accompanied by Panasonic’s “Report of Analysis of Customer
 25 Claim” related to this claim. The Report confirmed that based upon serial numbers provided with
 26 the claim, “these modules were manufactured by SANYO and sold in USA market” and that “the
 27 Power Output warranty (20 years) is available.” (See Exhibit “B”).

28 135. The Panasonic Report also stated: “We confirmed that the modules have linear

delamination” and concluded “*It is entirely possible that there are more modules that are underperforming - but without electrical testing, there is no way for us to know.*” *Id.*

136. The rejection by Trevor Tufts of Plaintiff’s valid warranty claim and insistence that Plaintiff gather “electrical data” constitutes a breach of the warranty.

137. Tuft also admitted the extensive delamination in an April 13, 2018 email when, by analogy, he stated: “the paint on these Mercedes is definitely falling off, [but] the warranty only covers the horsepower of the engine.” (See Exhibit “D”).

138. On March 5, 2019, Plaintiff served a notice of warranty claim on Sanyo by certified mail addressed to: “SANYO Energy (USA) Corp. Attn: Solar Products Warranty Claim SANYO Energy (USA) Corp. Attn: Solar Products Warranty Claim 2055 SANYO Avenue, San Diego, CA 92154.” (See Exhibit “E”). This is the name and address that Plaintiff’s Warranty instructed claimants to use. The notice was returned to Plaintiff with notation “return to sender Insufficient Address. Unable to forward. (See Exhibit “F”).

139. On March 5, 2019, Plaintiff also served a notice of warranty claim on Panasonic at its headquarters, addressed as follows: “PANASONIC ECO SOLUTIONS NORTH AMERICA, Division of Panasonic Corporation of North America, Two Riverfront Plaza, 5th Floor, Newark, New Jersey 07102, Attn: Product Warranties”. (See Exhibit “E”). Panasonic never responded to this notice.

140. The Warranty instructed that claimants could submit warranty claims at www.sanyo.com. At all times relevant to this claim, www.sanyo.com was and is a defunct website which does not forward the claimant to the Panasonic website.

141. The warranty claim section of the Panasonic site makes no reference to Sanyo panels. Nonetheless, Plaintiff used the Panasonic website to notify Panasonic of his warranty claim. Plaintiff identified the model number of his panels and stated:

I have been informed by my solar contractor that my panels have delaminated. I am concerned about the safety and power output of these panels. They are not functioning properly. Please consider this a notice of a warranty claim and a request that you come to my home to inspect the panels

1 142. On March 9, 2019, Panasonic representative Erik Anderson responded to a March
 2 8, 2019 email from Plaintiff further notifying Panasonic of his power output warranty claim, by
 3 stating: “Panasonic does not perform any field work.” Panasonic has made no effort to follow up
 4 further with Plaintiff regarding the warranty claim that he submitted. Panasonic has performed no
 5 testing, despite the requirements of the Warranty and Panasonic’s contention that such testing is
 6 needed to evaluate claims. Attached hereto and marked Exhibit “G” is the March 8, 2019 email
 7 from Plaintiff to Erik Anderson. Attached hereto and marked Exhibit “H” is the March 9, 2019
 8 email from Erik Anderson to Plaintiff.

9 143. Panasonic breached the Power Output Warranty on April 13, 2018 by failing to
 10 and refusing to test to obtain power output measurements as promised in the Power Output
 11 Warranty and by refusing to replace 36 defective, delaminated panels which were suffering from
 12 progressive power degradation.

13 144. The delamination defect in all of Plaintiff’s SANYO Panels constitutes a breach of
 14 the Power Output Warranty. On information and belief, the defect has caused the panels to lose
 15 their ability to produce the represented power levels which has resulted in a breach of the Power
 16 Warranty. Because all of Plaintiff’s panels have failed within their useful life, Plaintiff have
 17 demanded that SANYO replace the entire solar system. SANYO has refused to do so and has
 18 thereby further breached the warranty.

19 145. As a result of the defects alleged herein, for an unknown period of time, the power
 20 production of the panels on Plaintiff’s property was below the levels promised in the Power
 21 Warranty.

22 146. All of the SANYO Panels that failed at Plaintiff’s residence were due to the same
 23 systemic and universal delamination defect.

24 147. In response, SANYO refused to pay for damages for loss of power production, the
 25 cost of the removal and replacement of the racking system, or the cost of investigation of the
 26 defective panels. Plaintiff had to pay Power Overhaul approximately Five Hundred Fifty Dollars
 27 (\$550.00) for labor costs associated with the inspection and installation of the single replacement
 28 panel provided by SANYO. Plaintiff has incurred increased electricity bills that he would not

1 have incurred if the system were functioning properly. Despite repeated requests and the known
 2 safety and fire risks posed by the delaminated panels on Plaintiff's home, SANYO has refused to
 3 replace the defective system.

4 148. The SANYO warranty program is deliberately designed and implemented to
 5 obstruct and prevent the resolution of warranty claims by owners of SANYO Panels in order to
 6 avoid the considerable expense of the testing and costs of replacement panels.

7 **B. FACTS COMMON TO ALL PLAINTIFFS**

8 149. SANYO's refusal to pay for: (1) testing of the SANYO Panels (2) "on-site labor
 9 and any costs associated with the "removal, reinstallation or transportation of [the SANYO
 10 Panels]" or (3) "any special incidental, consequential or punitive damages arising from the use or
 11 loss of use of or failure of [the SANYO Panels] to perform as warranted, including but not limited
 12 to damages for lost power, cost of substitute power, lost profits or savings represents unlawful
 13 and wrongful enforcement of the Warranty Exclusions against Plaintiffs.

14 150. The racking systems used to mount the SANYO Panels are not the same size as the
 15 racking systems that are used for products which can replace the SANYO Panels. For this reason,
 16 the removal and replacement of the SANYO Panels cannot be accomplished without replacing the
 17 racking systems to which the SANYO Panels are attached. This replacement damages the roof
 18 and, unless addressed by the installer, has a serious adverse effect on the appearance of the roof.

19 151. SANYO refused to pay for the cost of testing the SANYO Panels as required by
 20 the Warranty. As a result, Plaintiffs were forced to pay the substantial cost of such testing and
 21 thereby has been damaged in an amount to be proven at trial.

22 **V. CLASS ALLEGATIONS**

23 152. The Class which Plaintiffs seek to represent in this action is composed of six (6)
 24 Subclasses defined as follows.

- 25 a. **Original Purchaser Consumer Subclass:** All persons or entities in the
 26 United States who purchased and installed SANYO Panels.
 27 b. **Original Purchaser Subclass:** All persons or entities who purchased and
 28 installed SANYO Panels in California.

- c. **Original Purchaser Subclass:** All persons or entities who purchased and installed SANYO Panels in New Jersey.
- d. **Subsequent Title Holder Subclass:** All persons who purchased private residences, buildings, or ground mounted SANYO solar systems in the United States on which the SANYO Panels were originally installed.
- e. **Subsequent Title Holder Subclass:** All persons who purchased private residences, buildings, or ground mounted SANYO solar systems in California on which the SANYO Panels were originally installed.
- f. **Subsequent Title Holder Subclass:** All persons who purchased private residences, buildings, or ground mounted SANYO solar systems in New Jersey on which the SANYO Panels were originally installed.
- g. **Non-consumer commercial owners of SANYO Panels are excluded from claims limited to consumers.**

153. Excluded from the Class are Defendants, any entity in which any Defendant has a controlling interest, and Defendants' legal representatives, heirs and successors, and any judge to whom any aspect of this case is assigned, and any member of such a judge's immediate family. Claims for personal injury are excluded from the claims of the Class.

154. Plaintiffs reserve the right to modify or amend the Class definition, as appropriate.

155. The specific years during which the relevant panels were manufactured and marketed, are unknown to Plaintiffs at this time. Plaintiffs also have insufficient information at this time to specify all series or models of panels falling within the Class, because Plaintiffs lack full knowledge of the basis on which SANYO ascribed model numbers to particular panels. Once this information is ascertained, Plaintiffs will amend the complaint to assert the exact Class period and the specific models and/or series of panels that constitute the Class.

156. Individual and representative Plaintiffs bring this lawsuit as a Class action, on behalf of themselves and all others similarly situated, in part, pursuant to California Code of Civil Procedure § 382 ("CCP § 382").

157. Under CCP § 382 a class action is proper where the Class is ascertainable, there is a well-defined community of interest among class members, the question is one of a common or

1 general interest or the parties are numerous and it is impracticable to bring them all before the court.

2 158. Certification of Plaintiff's claims for class wide treatment is appropriate because
3 Plaintiffs can prove the elements of their claims on a class-wide basis and because this case meets
4 the requirements of CCP § 382.

5 159. **Numerosity.** The members of the Class are so numerous that individual joinder of
6 all the members is impracticable. Plaintiffs are informed and believe, and thereon allege, that there
7 are at least thousands of purchasers who have been damaged by the conduct alleged herein.

8 160. **Commonality and Predominance.** This action involves common questions of law
9 and fact which predominate over any questions affecting individual Class Members including,
10 without limitation, the following:

- 11 a. Whether Defendant SANYO violated California's Unfair Competition Law,
12 Bus. & Prof. Code § 17200 *et seq.*, by, among other things, engaging in
13 unfair or unlawful practices;
- 14 b. Whether Defendant SANYO violated California's Consumer Legal
15 Remedies Act, Civ. Code § 1750 *et seq.*, by falsely advertising the Solar
16 Panels were of a certain quality when in fact, they were not;
- 17 c. Whether Defendant SANYO breached its express warranties to Plaintiffs
18 and the Class;
- 19 d. Whether Plaintiffs and the Class are entitled to compensatory damages, and
20 the amount of such damages; and
- 21 e. Whether Defendants should be declared financially responsible for the costs
22 and expenses of removal and replacement of all Solar Panels as well as
23 compensation for the lost energy generation capacity of the Solar Panels.
- 24 f. Whether Defendants should be compelled to perform warranty inspections
25 and conduct power measurements.

26 161. **Typicality.** Plaintiff's claims are typical of the claims of the Class because
27 Plaintiffs, like all members of the Class, has been damaged by Defendants' unlawful conduct, in
28 that Plaintiffs will incur the cost of removing and replacing the defective SANYO Panels, and

1 have and will incur the increased costs of electricity resulting from the loss of electricity
 2 generation during the period between the failures and replacement and are presently exposed to
 3 safety risks and fire hazards. The factual basis and causes of action for **Plaintiffs'** claims are
 4 common to all members of the Class and represent a common course of misconduct resulting in
 5 injury to all Class Members.

6 162. **Adequacy of Representation.** Plaintiffs are an adequate representative of the
 7 Class because their interests do not conflict with the interests of the Class and they have retained
 8 counsel competent and experienced in complex class action litigation and who specializes in class
 9 actions involving defective construction products. Plaintiffs intend to prosecute this action
 10 vigorously and the interests of the Class will be fairly and adequately protected by Plaintiffs and
 11 their counsel.

12 163. **Superiority.** A class action is superior to all other available means for the fair and
 13 efficient adjudication of this controversy in that:

- 14 a. The prosecution of separate actions by individual members of the
 15 Class would create a foreseeable risk of inconsistent or varying
 16 adjudications which would establish incompatible results and
 17 standards for Defendants;
- 18 b. Adjudications with respect to individual members of the Class
 19 would, as a practical matter, be dispositive of the interests of the
 20 other members not parties to the individual adjudications or would
 21 substantially impair or impede their ability to protect their own
 22 separate interests;
- 23 c. Class action treatment avoids the waste and duplication inherent in
 24 potentially thousands of individual actions, and conserves the
 25 resources of the courts; and
- 26 d. The claims of individual Class Members are not large when
 27 compared to the cost required to litigate such claims. The
 28 individual Class members' claims are on average approximately

Twenty Thousand Dollars (\$20,000.00) to Twenty-Five Thousand Dollars (\$25,000.00). Given the high cost of litigation, it would be impracticable for the members of the Class to seek individual redress for Defendants' wrongful conduct. The class action device provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. The case presents no significant management difficulties which outweigh these benefits.

VI. DAMAGE

164. As a result of the facts alleged herein, Plaintiffs and the Class have been damaged in an amount equal to the difference in value between the solar panels had they been as represented by SANYO and the value of the SANYO Panels as actually delivered by SANYO. In addition, Plaintiffs and the Class have been or will be compelled to incur cost and expense to, *inter alia*, investigate the reasons for the failure of their SANYO Panels, remove and replace the SANYO Panels, and pay increased electricity costs resulting from the loss of electricity generated by the SANYO Panels. These amounts include sums necessary to repair damage to the roof which occurs because the mounts for the SANYO Panels must be removed, as well as the cost of building permits and the cost to replace the inverters for the solar system.

165. The Solar Tiles were intended to enable Plaintiffs and other Class Members to use the exteriors of their homes to collect solar energy and generate electricity. Class Members have suffered loss of use of their homes for this purpose because the Solar Tiles have failed as the result of delamination.

166. Plaintiffs, like all Class Members, have been damaged by Defendants' wrongful conduct, in that they have lost the intended use of their home exterior for generating electricity, and will continue to incur such loss for the remainder of expected life of the Solar Tiles, unless they incur the additional cost of replacing the defective Solar Tiles on their homes with an alternative system. The delamination causes sudden and accidental physical damage to other

1 components of the Panel, which results in the power loss. Class Members will also incur costs to
 2 repair damage to other components thereof which the Panels have directly and proximately
 3 caused. The water intrusion and arcing can also cause damage to elements other than the
 4 Laminate, including electrical wiring, cables, electrical junction boxes, inverters, underlayment,
 5 plywood, and the underlying roof itself.

6 **VII. ESTOPPEL TO ASSERT STATUTE OF LIMITATIONS**

7 167. Despite SANYO's knowledge that delamination necessarily results in power loss
 8 and that delamination creates a safety risk of fire and/or electric shock, SANYO has refused to
 9 honor warranty claims based upon photographic evidence of delamination based upon the
 10 knowingly false assertion that delamination is cosmetic, akin to paint scratched off a car, and not
 11 covered under the warranty.

12 168. Plaintiffs never agreed to a statute of limitations period of one year. Plaintiff was
 13 never provided with a copy of this written warranty or any written warranty related to the solar
 14 panels before the panels were installed. Plaintiff was never advised of the existence of the
 15 provision that purports to shorten the statute of limitations period nor was that provision the
 16 product of negotiations with Plaintiff. Plaintiff did not sign the written warranty nor any other
 17 document that purported to shorten the statute of limitations period.

18 169. The language in the warranty purporting to shorten the limitations period is not
 19 conspicuous. The language is not in bold print and is not in larger font. It is located near the end
 20 of the document. It is not capitalized and, in fact, is the only portion of the paragraph in which it
 21 appears that is not capitalized.

22 170. The written warranty proffered by Defendants is a pre-printed, standardized form
 23 drafted by SANYO

24 171. Defendants' failure to disclose their duty to conduct power measurements and that
 25 the written warranty purported to have a one year statute of limitations had a direct bearing on the
 26 necessity of bringing a timely suit.

27 172. Even when such failures occur, it is difficult for members of the Class to determine
 28 the actual cause of the failure. Accordingly, Plaintiffs did not and members of the Class do not

1 become aware of breaches of warranty alleged herein until the defects in the SANYO Panels
 2 become manifest and the property owner does sufficient investigation with the use of third party
 3 solar contractors or experts to identify the source of the problem. Accordingly, the statute of
 4 limitations for the claims asserted herein does not commence to run until some period of time
 5 after Plaintiff's discovery of the defect in each of its 37 panels.

6 173. SANYO has not made any general disclosure of the defect. Nor did SANYO
 7 disclose the safety risk associated with the defect. Plaintiffs were ignorant of the true facts.
 8 Accordingly, SANYO is estopped to rely on any statutes of limitation in defense of this action.

9 174. Defendants intended its lack of disclosure to deceive and induce Plaintiffs not to
 10 act.

11 175. SANYO representative Trevor Tufts represented to a Class Member's
 12 representative on April 13, 2018 that SANYO evaluates solar panel warranty claims on a "per-
 13 module" basis. Therefore, even assuming *arguendo* that a one year statute of limitations applies,
 14 such one year limitation would be applied to each module individually as that individual module
 15 manifested defects.

16 **FIRST CLAIM FOR RELIEF**
 17 **(Breach of Express Written Warranty)**
 18 **(California, New Jersey and Nationwide Class)**

19 176. Plaintiffs incorporate by reference each allegation set forth in the preceding
 20 paragraphs.

21 177. This claim for relief is brought by Plaintiffs on behalf of the California Class and
 22 is pleaded in the alternative.

23 178. When Plaintiffs purchased the SANYO Panels, Plaintiffs were promised a 20-year
 24 manufacturer's power warranty. The promise that was conveyed to Plaintiffs that the SANYO
 25 Panels would produce at least 80% power from years 11 through 20 is corroborated by the written
 26 warranty that SANYO contends governs the warranty claim.

1 **“2. Limited Power Output Warranty – Limited Remedy.**

2 SANYO warrants the power output degradation will not fall under
3 80% of the designated minimum Power (Pmin) output shown
4 below on Table 1 from the date of Product(s) purchase by the
5 Customer. Upon receipt of a warranty claim, SANYO or its
6 designated representative shall conduct measurements to determine
7 the actual power output of the Product(s). SANYO’s
8 measurements shall be the sole determination for purposes of
9 warranty settlement.”

10 If such power loss is the result of a product defect, as determined by
11 SANYO in its sole and absolute discretion, SANYO will supplement the
12 output deficiency using one of the following remedies:

- 13 a) SANYO may provide additional new or refurbished Product(s) to
14 restore the deficient output; or
15 b) SANYO may repair or replace the Product(s) with new or
16 refurbished Product(s); or
17 c) SANYO may refund the Customer the original Product(s) purchase
18 price less depreciation. The refund will be pro-rated by the
19 number of years and/or months from the date of purchase by the
20 Customer.”

21 179. SANYO also breached the warranty by failing to conduct tests required by
22 warranty and failing to pay for such tests.

23 180. Plaintiff is informed and believes that the delamination defect has caused all of his
24 panels to be unsafe and to produce electricity below the promised 80%. SANYO breached the
25 power warranty by failing to provide 80% power and refusing to replace all panels that had failed
26 or were reasonably certain to fail.

27 181. The warranty also explicitly provides that upon receipt of a warranty claim,
28 SANYO will conduct power output measurements.

182. Inherent in the Power Warranty is the promise to provide such power safely. Regardless of the power output level, SANYO has breached the Power Warranty because the panels are unable to produce the promised level of power output without an unreasonable risk of electrical shock and/or fire.

183. As described hereinabove, the panels have delaminated and present an imminent safety risk and fire hazard.

184. As a result of SANYO's breach of the Power Warranty, Plaintiffs and the Class have suffered damages in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF
(Breach of Express Warranty - Magnuson-Moss Warranty Act)
(California, New Jersey and Nationwide Class)

185. Plaintiffs incorporate by reference each allegation set forth in the preceding paragraphs.

186. The allegations of this Claim for Relief are based on the breaches of warranty addressed fully in the previous Claim for Relief. The specific allegations of the complaint relevant to that claim are detailed therein.

187. The Solar Panels are a consumer product as defined in 15 U.S.C. § 2301(1).

188. Plaintiffs and the Class Members are consumers as defined in 15 U.S.C. § 2301(3).

189. SANYO is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

190. The Warranty contains "written warranties" within the meaning of 15 U.S.C. § 2301(6).

191. As alleged previously, SANYO has breached the Warranty.

192. Additionally, pursuant to 15 U.S.C. § 2304(d)(1), SANYO may not assess Plaintiffs or Class Members any costs the warrantor or its representatives incur in connection with the required remedy of a warranted product...[I]f any incidental expenses are incurred because the remedy is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the consumer as a condition of securing remedy, then the consumer shall be entitled to recover reasonable incidental expenses which are so incurred in any action against

the warrantor.” SANYO has refused to pay all costs associated with the inspection, diagnosis of power output defect, removal and replacement of the Solar Panels.

193. Pursuant to 15 USC § 2304(b)(1), a warrantor is prohibited from imposing any duty on a consumer as a condition of securing a remedy other than a duty of notification.

194. Plaintiffs have provided SANYO with notice of breach of the Warranty and a reasonable opportunity to cure the breach. SANYO has failed to remedy the breach of its obligations under the Warranty.

195. Further notice to SANYO of its breach of the Warranty would be futile because SANYO is aware of and has acknowledged the defects in the Solar Panels and, because it no longer manufactures the Solar Panels, it cannot provide to Plaintiffs and the Class Members any remedy other than replacement of the Solar Panels with other panels.

196. As a result of SANYO’s breach of the Warranty, Plaintiffs and the Class Members have been damaged in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Unjust Enrichment)
(California and Nationwide Class)

197. Plaintiffs incorporate by reference each allegation set forth in the preceding paragraphs.

198. In the alternative to an express warranty, SANYO has been unjustly enriched as follows.

199. Plaintiffs paid Twenty-One Thousand Nine Hundred Ninety-Five Dollars (\$21,995.00) to purchase a solar power system which included 37 Sanyo Panels.

200. Plaintiffs believed that the solar panels that they were purchasing were covered by a power warranty that would guarantee 90% performance for the first 10 years and 80% performance for the next 10 years. In the absence of such a warranty, Plaintiffs would not have purchased the SANYO Panels. Plaintiff’s belief was based upon representations about the warranty made by SANYO with the intent that it be passed along to consumers by the SANYO installer.

201. SANYO has been further unjustly enriched in that the purchase price paid by Plaintiff's and Class Members contemplated that SANYO would bear the cost of power output testing. However, SANYO has refused to perform such testing which renders the warranty useless as SANYO refuses to adjust virtually all warranty claims without the consumer providing "electrical output data." It is impossible for the Plaintiff and Class Members to obtain power output measurements due to the cost and complexity of the testing.

202. SANYO was enriched by this transaction because it made a profit on the sale of the solar panels and Plaintiffs agreed to pay the purchase price in the belief that the panels were covered by a 20-year power warranty. SANYO's enrichment came at the expense Plaintiffs because Plaintiffs paid the purchase price from which SANYO derived its profit.

203. SANYO's enrichment is unjust in that in that SANYO has engaged in unlawful or unfair business acts alleged herein. SANYO has engaged in these unlawful or unfair business acts in an effort to avoid honoring the promises made to Plaintiffs and upon which Plaintiffs relied in making their purchasing decision.

204. Plaintiffs and Class Members are entitled to a judgment of restitution or disgorgement of monies that SANYO has unjustly obtained or retained as a result of its wrongful acts alleged above, including but not limited to amounts paid by Plaintiffs and Class Members for power output testing that should have been paid for by SANYO.

FOURTH CLAIM FOR RELIEF
(Violation of Business & Professions Code §17200, *et seq.*)
(California and Nationwide Class)

205. Plaintiffs incorporate by reference each allegation set forth in the preceding paragraphs.

206. Plaintiffs bring this cause of action and on behalf of the California Class.

207. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." A single unlawful, unfair and/or fraudulent act is sufficient to find a violation.

208. SANYO's conduct, as described herein, was and is unfair or unlawful and in violation of the UCL. SANYO's conduct violates the UCL in at least the following ways:

- a. SANYO has refused to conduct power measurements required by paragraph 2 of the written warranty, in violation of the warranty;
- b. SANYO has concealed from claimants that SANYO is contractually obligated to provide power measurement testing at SANYO's expense, despite having an obligation to disclose warranty terms to claimants.
- c. SANYO has misrepresented to Plaintiffs and Class Members that claimants are required to obtain power output measurements at their own expense to pursue a warranty claim;
- d. SANYO has misrepresented to Plaintiffs and Class Members that they are required to obtain power output tests in situations in which SANYO knew such tests were unnecessary because Plaintiffs and Class Members had presented satisfactory evidence of the presence of delamination, and hence panel failure, a condition understood by SANYO, and not Plaintiffs and Class Members;
- e. SANYO denied warranty claims in bad faith or demanded further unnecessary information when claimants had provided sufficient evidence, i.e., evidence of delamination;
- f. SANYO has violated 15 USC § 2304(b)(1) of the Magnuson Moss Warranty Act by setting conditions other than notification on Plaintiff's receipt of warranty remedies. Specifically, SANYO conditions the receipt of any warranty remedy on Plaintiffs and Class Members paying for expensive and complicated power tests, which only solar experts could perform, (even when the tests are not necessary).
- g. SANYO has violated 15 USC § 2304(d) of the Magnuson Moss Warranty Act, which requires a warrantor to provide a warranty remedy "without charge" to the consumer. SANYO has required Plaintiffs and Class Members to incur charges for expensive power tests before SANYO considers their warranty claims;

- h. SANYO has violated 16 CFR § 702.3 by failing in most instances to provide a copy of the written warranty as required;
- i. SANYO has misrepresented to Plaintiffs and Class Members that delamination is merely cosmetic and, therefore, not covered by warranty when SANYO knew that delamination necessarily indicated power degradation and also presented an unreasonable safety risk;
- j. SANYO misrepresented that the solar panels would produce the promised level of power for 20 years.
- k. SANYO has violated California Commercial Code §2313(1)(a), that SANYO by breaching the express warranty as set forth in the First Claim for Relief.

209. Each of SANYO's actions in the foregoing paragraph constitute unfair and/or unlawful practices pursuant to California Business and Professions Code §§ 17200, *et seq.*

210. All of SANYO's conduct alleged herein occurred in the course of SANYO's business and were part of a pattern or generalized course of conduct.

211. SANYO has further engaged in an unfair business practice by failing to advise its consumers of the safety risk created by its solar panels because the solar panels have delaminated or will delaminate before the end of the solar panels' useful life. Delamination creates a substantial risk of fire and/or electric shock. SANYO has promised that the solar panels will provide at least 80% output for 20 years. It is inherent in this promise that the panels will produce the power safely. Due to the safety risk, SANYO had an affirmative obligation to notify its consumers regarding these risks but has failed to do so.

212. SANYO engages in these unlawful and/or unfair business acts in order to avoid costs associated with power tests that are SANYO's responsibility and also to dissuade consumers from making or further pursuing legitimate warranty claims due to cost and delay. SANYO has misrepresented the alleged cosmetic nature of delamination in order to avoid paying warranty claims.

213. SANYO's unlawful or unfair business acts, as alleged above, have caused Plaintiffs and Class Members to incur costs for inspection, procuring photographs and power

1 output tests to pursue warranty claims. These acts also delay warranty claims during which time
 2 Plaintiffs and Class Members incur damages due to lower power output. As a result of the
 3 foregoing, Plaintiffs and Class Members have been damaged by SANYO'S unlawful or unfair
 4 business acts.

5 214. SANYO 's practices are unfair and likely to mislead, and have misled, members of
 6 the Public. This business practice was unfair and unlawful as Plaintiffs and members of the
 7 Class, were misled into believing that they were required to provide their own testing or were
 8 deprived of the benefit of the contractual provision that SANYO provide testing.

9 215. SANYO knew its warranty contract required it to provide testing.

10 216. SANYO continued to tell potential warranty claimants that claimants were
 11 required to provide testing despite the fact it knew or should have known that this was unfair,
 12 unlawful and in breach of the warranty.

13 217. Plaintiff and all members of the Classes suffered injury in fact as a result of
 14 SANYO's unfair methods of competition. As a proximate result of SANYO's conduct, Plaintiffs
 15 and members of the Classes were exposed to these representations or requirements, relied on
 16 them, and suffered monetary loss as a result.

17 218. Plaintiff seeks to enjoin further unlawful or unfair acts or practices by SANYO
 18 under Cal. Bus. & Prof. Code § 17200, to compel SANYO to act as follows: when SANYO
 19 receives a Power Warranty claim from a consumer, SANYO shall provide a remedy by removing
 20 and replacing all solar panels that have experienced delamination, or in the alternative, SANYO
 21 shall be compelled, at its cost, to conduct measurements of power output of SANYO Panels. If
 22 after such testing SANYO refuses to provide a full remedy, SANYO shall be compelled to
 23 remove and replace at its expense all panels that are experiencing delamination and all panels that
 24 are producing power at a level below the promised power output. Plaintiffs also seek attorneys'
 25 fees and costs and such other appropriate relief as allowed under § 17200, *et seq.*

26 219. SANYO's acts were done maliciously, oppressively, deliberately, and in reckless
 27 disregard of Plaintiff's and the other Class members' rights and well-being to enrich SANYO.
 28 SANYO's conduct warrants an assessment of punitive damages in an amount sufficient to
 deter such conduct in the future, which amount is to be determined according to proof.

FIFTH CLAIM FOR RELIEF**(Violation of New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.*)
(New Jersey Class)**

220. Plaintiff incorporates by reference each allegation set forth in the preceding paragraphs.

221. Plaintiff brings this cause of action individually and on behalf of the New Jersey Class.

222. The New Jersey Consumer Fraud Act (NJCFA) prohibits “any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission...” The NJCFA prohibits the foregoing “whether or not any person has in fact been misled, deceived or damaged thereby.”

223. Plaintiff is informed and believe that SANYO did not conduct any testing or sufficient testing to have a reasonable basis for asserting that the solar panels would produce the promised level of power for 20 years. SANYO misrepresented that the solar panels would produce the promised level of power for twenty years.

224. Consumers were-likely to be deceived by the misrepresentation of SANYO regarding the performance of its solar panels over 20 years and were deceived by it.

225. SANYO’s conduct, as described herein, was and is unfair and/or unlawful and in violation of the NJCFA. SANYO’s conduct violates the NJCFA in at least the following ways:

- a. SANYO has refused to conduct power measurements required by paragraph 2 of the written warranty, in violation of the warranty;
- b. SANYO has concealed from claimants that SANYO is contractually obligated to provide power measurement testing at SANYO’s expense, despite having an obligation to disclose warranty terms to claimants.
- c. SANYO has inaccurately told Plaintiff and Class Members that claimants are required to obtain power output measurements at their own expense to pursue a warranty claim;
- d. SANYO has inaccurately told Plaintiff and Class Members that they are required to obtain power output tests in situations in which SANYO knew such tests were unnecessary because Plaintiff and Class Members had

presented satisfactory evidence of the presence of delamination, and hence panel failure, a condition understood by SANYO, and not Plaintiff and Class Members;

- e. SANYO denied warranty claims in bad faith or demanded further unnecessary information when claimants had provided sufficient evidence, i.e., evidence of delamination;
- f. SANYO has violated 15 USC § 2304(b)(1) of the Magnuson Moss Warranty Act by setting conditions other than notification on Plaintiff's receipt of warranty remedies. Specifically, SANYO conditions the receipt of any warranty remedy on Plaintiff and Class Members paying for expensive and complicated power tests, which only solar experts could perform, (even when the tests are not necessary).
- g. SANYO has violated 15 USC § 2304(d) of the Magnuson Moss Warranty Act, which requires a warrantor to provide a warranty remedy "without charge" to the consumer. SANYO has required Plaintiff and Class Members to incur charges for expensive power tests before SANYO considers their warranty claims;
- h. SANYO has inaccurately told Plaintiff and Class Members that delamination is merely cosmetic and, therefore, not covered by warranty when SANYO knew that delamination necessarily indicated power degradation and also presented an unreasonable safety risk;
- i. SANYO inaccurately told Plaintiff and Class Members that the solar panels would produce the promised level of power for 20 years.
- j. SANYO has violated New Jersey Commercial Code § 12A:2-313, that SANYO by breaching the express warranty as set forth in the Second Claim for Relief.

226. SANYO has further engaged in an unfair business practice by failing to advise its consumers of the safety risk created by its solar panels because the solar panels have delaminated or will delaminate before the end of the solar panels' useful life. Delamination creates a substantial risk of fire and/or electric shock. SANYO has promised that the solar panels will

1 provide at least 80% output for 20 years. It is inherent in this promise that the panels will
 2 produce the power safely. Due to the safety risk, SANYO had an affirmative obligation to notify
 3 its consumers regarding these risks but did not do so.

4 227. SANYO engages in these wrongful acts in order to avoid costs associated with
 5 power tests that are SANYO's responsibility and also to dissuade consumers from making or
 6 further pursuing legitimate warranty claims due to cost and delay. SANYO has misrepresented
 7 the alleged cosmetic nature of delamination in order to avoid paying warranty claims already
 8 made.

9 228. SANYO's wrongful acts, as alleged above, have caused Plaintiff and Class
 10 Members to incur costs for tests to pursue warranty claims. These acts also delay warranty claims
 11 during which time Plaintiff and Class Members incur damages due to lower power output. As a
 12 result of the foregoing, Plaintiffs and Class Members have been damaged by SANYO'S wrongful
 13 acts.

14 229. Plaintiff and all members of the Classes suffered injury in fact as a result of
 15 SANYO's wrongful acts. As a proximate result of SANYO's conduct, Plaintiff and members of
 16 the Classes were subjected to these unfair and unlawful practices, and suffered monetary loss as a
 17 result.

18 230. Pursuant to § 56.8-2.11 of the NJCFA, New Jersey Class Members are entitled to a
 19 refund of all monies acquired by SANYO by violations of the NJCFA. The rights and remedies
 20 accorded to New Jersey Class Members under the NJCFA are in addition and cumulative of any
 21 other right.

22 231. SANYO's acts were done maliciously, oppressively, deliberately, and in reckless
 23 disregard of Plaintiff and the other Class members' rights and well-being to enrich SANYO.
 24 SANYO's conduct warrants an assessment of punitive damages in an amount sufficient to
 25 deter such conduct in the future, which amount is to be determined according to proof.

PRAYER FOR RELIEF

26 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, pray the
 27 Court to certify the Class as defined hereinabove, to enter judgment against Defendants and in
 28 favor of the Class, and to award the following relief:

1. For Certification of the proposed Class and each Subclass thereof;

- 1 2. For compensatory damages as alleged herein, according to proof;
- 2 3. For an injunction enjoining SANYO from enforcing, threatening to enforce or
- 3 claiming the right to enforce any of the Warranty Exclusions and requiring that: (1) SANYO
- 4 advise consumers affirmatively of their rights to all damages to which they are lawfully entitled;
- 5 (2) SANYO make full disclosure to all members of the Class concerning the risk of fire resulting
- 6 from the failure of the SANYO Panels and advise members of the Class how they can determine
- 7 if their SANYO Panels have failed; and (3) SANYO be enjoined from asserting the one year
- 8 statute of limitations.
- 9 4. For an injunction compelling SANYO to provide a remedy by
- 10 a. removing and replacing at its expense all solar panels; or,
- 11 b. in the alternative, if it is determined at trial that testing is needed,
- 12 i. to compel SANYO to perform testing at its expense; and
- 13 ii. to compel SANYO to then remove and replace at its expense all
- 14 solar panels that are experiencing delamination and all solar panels
- 15 that are producing power at a level below the promised power
- 16 output.
- 17 5. For a judgment of restitution or disgorgement of monies that SANYO has unjustly
- 18 obtained or retained as a result of its wrongful acts alleged above, including but not limited to
- 19 amounts paid by Plaintiff and Class Members for power output testing that should have been paid
- 20 for by SANYO.
- 21 6. For costs and attorneys' fees, as allowed by law;
- 22 7. For such other further legal or equitable relief as this Court may deem appropriate
- 23 under the circumstance; and
- 24 8. For an award of punitive damages.
- 25
- 26
- 27
- 28

1 DATED: April 12, 2019

BIRKA-WHITE LAW OFFICES

2
3 By: /s/ David M. Birka-White
4 DAVID M. BIRKA-WHITE

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17 Attorneys for Individual and Representative
18 Plaintiff RICHARD ZICCARELLO

19 **PLAINTIFFS' DEMAND FOR JURY TRIAL**

20 Plaintiff RICHARD ZICCARELLO, on behalf of himself and all others similarly situated,
21 by and through Birka-White Law Offices, hereby demands a jury trial of all issues in the above-
22 captioned matter.

23 DATED: April 12, 2019

BIRKA-WHITE LAW OFFICES

24 By: /s/ David M. Birka-White
25 DAVID M. BIRKA-WHITE

26 Attorneys for Individual and Representative
27 Plaintiff RICHARD ZICCARELLO

EXHIBIT A

4/12/2019

Sanyo reponse to Photon article here

re-wrenches@lists.re-wrenches.org

Sanyo reponse to Photon article here

(too old to reply)

Kirk Herander, VSE

8 years ago

I decided to post the text of Sanyo's letter here as it lists specific modules and timelines affected.

March 3, 2011

Subject: Photon article concerning SANYO solar modules in North America
We are writing to inform you that PHOTON International Magazine will publish an article about SANYO modules in an upcoming issue. The article will most likely have some contents regarding an occurrence of short circuits caused by insulation degradation in some SANYO solar module products in North America.

Please allow us to provide a brief outline of the situation for your reference. After receiving the first complaint about an issue with a panel in commercial PV systems from a customer in autumn 2009, SANYO conducted a thorough investigation in the United States, where the problem was reported. As a result of our investigation, we found a very limited number of a similar occurrence (less than 0.01%) in commercial PV systems using HIP-xxxBA2, HIP-xxxBA3, and HIP-xxxBA5 HIT solar modules which were produced from 2002 to 2008, and sold only in North America. It is found that the subject modules experienced insulation degradation primarily caused by a combination of module structure, variation in production, environment of installation site and wiring requirements and guidelines for PV systems in North America.

SANYO has notified its immediate customers, and together SANYO conducted physical site evaluations and inspections. At the same time, SANYO is working with distributors to identify any remaining uninspected commercial systems and to take proactive measures. One of our measures to ensure the safety includes installing a new combiner box (monitoring system) which will detect any insulation failure and prevent short circuit in the PV system.

We have not had any reports of similar issues from our customers with residential PV systems (systems incorporate a small or single phase inverter/inverters that operate with Ground Fault Detector Interrupters which threshold value is 1A or less) in North America and there have been no reports outside of North America on similar panels found in commercial PV or residential PV systems.

Thank you for your understanding and continued patronage.

Sincerely,

Takashi "Charles" Hanasaki
Division President

My note: No bifacial part numbers are mentioned. Apparently only the older "lipped" frame style of standard panels is affected.

Kirk Herander

Vermont Solar Engineering

802.863.1202

NABCEP(tm) Certified Solar Installer

NYSERDA-eligible Installer

VT Solar Incentive Program Partner

Kirk Herander, VSE

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Sanyo reponse to Photon article here

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Division President

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Kirk Herander
Vermont Solar Engineering
802.863.1202
NABCEP(tm) Certified Solar Installer
NYSERDA-eligible Installer
VT Solar Incentive Program Partner

about - legalese

EXHIBIT B

Panasonic	Report of Analysis of Customer Claim	RMA No.
		022118
		Date:
		April 9, 2018

Description of Complaint				
Complaint Data	Subject	Ground fault	Customer	Matthew Alestra
	Complaint Date	2/21/2018	Claim Module Returned Date	N/A
	Model Name	HIP-200BA3	Customer Requirement	N/A
	Model Number	-		
Description	37 modules are being claimed for suspected ground fault damage. Claim form and photos were submitted, but no electrical testing was performed. 1 module (64BA01546) has significant backsheet bubbling and calcification. The rest of the modules have minor linear delamination.			

Conclusion/Cause	
<p>Partial-Warranty case.</p> <p>These modules' product warranty (2 years) has expired. However, the Power Output warranty (20 years) is available. Because we only have photos of these modules, we cannot place judgement based on the electrical performance of the modules. Instead, we will only base our judgement off the photos which were submitted by the contractor. One module (64BA01546) has signs of potential ground fault, and will be replaced under manufacturer's responsibility. The rest of the modules only show signs of minor linear delamination and minor dents/deformations of the back sheet, which are known to not be a sign of any degradation of performance.</p>	
Panasonic's responsibility? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Other	

Delivery Information	N/A
Stock Information	N/A
Current Production Information	N/A

Prepared by: Trevor Tufts	Checked by: <i>N. Tachil</i>	Approved by: <i>T. Tachil</i>
Date: 04/09/18	Date: 04/12/2018	Date: 04/13/2018

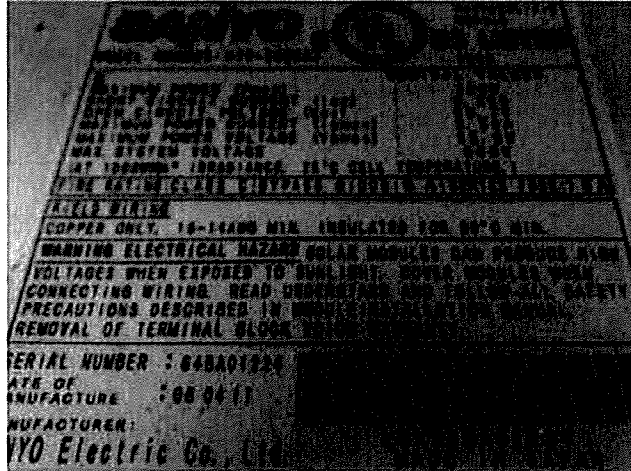
Control and Approval of the Action Performed			
Further Action Necessary?	YES	New Corrective and Preventive Action	
	NO		
Date		Signature of Quality Manager	

Panasonic	Report of Analysis of Customer Claim	RMA No.
		022118
		Date:
		April 9, 2018

Analysis Result:

1.) Identification of the module

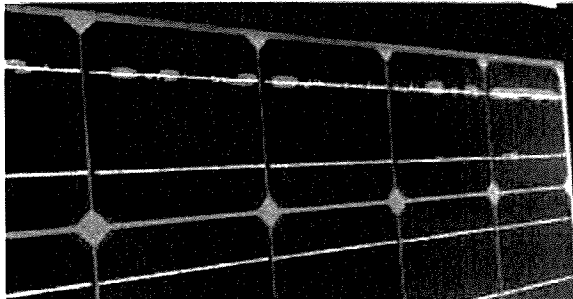
We confirmed the serial numbers of the modules from the pictures provided by the contractor, that these modules were manufactured by SANYO and sold in USA market (Picture 1). The product warranty (2 years) has expired. The output warranty (20 years) is available.



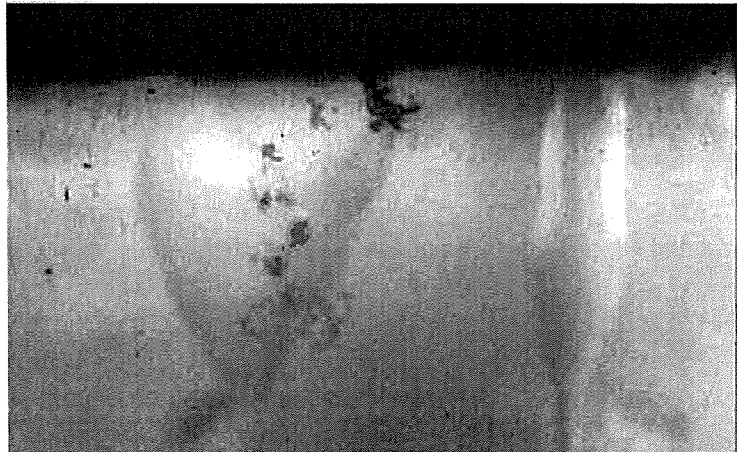
Picture 1 : Serial number

2.) Inspection result of defect module

We checked the claimed modules based on the claim information and the pictures provided by the customer. We confirmed that the modules have linear delamination (Picture 2), and one module has backsheet bubbling (Picture 3). These modules were claimed because of a ground fault detection at the inverter. This is inferred from the claim form (Picture 4). There are no electrical test results to inspect.



Picture 2: Linear delamination



Picture 3: Back sheet bubbling

Describe the failure in the module: MODULES ARE DELAMINATING AND CAUSING GROUND FAULTS

Picture 3: Quote from the claim form

3) Conclusion

These modules' product warranty (2 years) have expired. However, the Power Output warranty (20 Years) is available. Because we only have photographs of the modules, our judgement is limited. If we had Voc and Isc data for these modules, we might be able to place a more accurate judgement.

The majority of these modules have linear delamination - a simple visual defect not known to be a symptom of any performance degrading defect. One module has signs of current/potential ground fault (Back sheet bubbling, calcification) and will be replaced under the Power Output warranty.

It is entirely possible that there are more modules that are underperforming - but without electrical testing, there is no way for us to know.

EXHIBIT C



III Solar Module Limited Warranty

Models: HIT-VHA1, HIT-VHA2, HIT-VHA3, HIT-VHA4

Scope of Warranty (Coverage): This warranty applies to HIT solar cell module covered by the following conditions. (hereinafter "Products") and sold by SANYO Energy U.S.A. Corporation (hereinafter "SANYO") and is extended to the original end user purchaser (hereinafter "Customer").

1. Limited Product Warranty - Two-Year Repair or Replacement: SANYO warrants the Products to be free from defects in materials and workmanship under normal application, installation, use and service conditions. If the Products fail to conform to this warranty, SANYO will, at its sole option, either repair or replace the Products. This warranty shall extend for a period ending twenty-four (24) months from date of purchase by the Customer. This repair or replacement warranty shall be the sole and exclusive remedy provided under this warranty, and the original product warranty period remains in effect and will not be extended nor will a new warranty period begin upon repair or replacement of defective Products.

The following conditions apply to this Limited Product Warranty:

- The warranty remedy will extend only to claims received before the end of the warranty period.
- SANYO reserves the right to repair or replace the original Product(s) with new or refurbished Product(s). Early case option will be implemented at SANYO's sole discretion.
- Product(s) removal, transportation, reinstallation, and related fees are excluded from this Limited Product Warranty.
- This warranty is applicable to the Product(s) only and does not apply to any other system components or parts.

2. Limited Power Output Warranty - Limited Remedy: SANYO warrants the power output degradation will not fall under 5% of the designed Maximum Power (Pmax) output shown below on Table 1 from date of Product(s) purchase by the Customer. Upon receipt of a warranty claim, SANYO or its designated representative shall conduct measurements to determine the actual power output of the Product(s). SANYO's measurement shall be the sole determination for purposes of warranty settlement.

If such power loss is the result of a product defect, as determined by SANYO in its sole and absolute discretion, SANYO will supplement the output deficiency using one of the following remedies:

- SANYO may provide additional new or refurbished Product(s) to restore the deficient output or
- SANYO may repair or replace the Product(s) with new or refurbished Product(s), or
- SANYO may refund the Customer the original Product(s) purchase price less depreciation. The refund will be provided by the number of years and/or months from the date of purchase by the Customer.

When one of the power output supplemental remedies is employed, the following conditions will apply:

- The warranty remedy will extend only to claims received before the end of the warranty period.
- The purchase date of original Product(s) shall determine the start of the warranty period in the event SANYO repairs, replaces, or adds more Product(s).

Supplemental remedies may not be combined. (One remedy option (Additional Product(s) repair/replacement of Product(s), or provided refund) will be employed, at SANYO's sole option. Product(s) removal, transportation, reinstallation, and related fees are excluded from this Limited Power Output Warranty.)

Table 1: Minimum Output Power Allowances

Period	Remedy
At the Time of Purchase	Minimum Power (Pmin) = 90% of the nominal maximum output power stated on specification
1 to 10 years	90% of the minimum power at the time of purchase
10 to 25 years	80% of the minimum power at the time of purchase

Note: Minimum output power is measured at an optimum voltage under standard test conditions of 1000W/m² at a cell temperature of 25°C.

3. Limited Warranty Exclusions: The Limited Warranty described above in sections 1 and 2 excludes any of the following conditions:

- Improper usage, installation, wiring, handling, removal, or maintenance, and abuse (impact or accident).
- Product(s) sold and/or installed outside the geographic territory of North America (defined as the United States, Canada, and Mexico).
- Lack of compliance with National Electric Code or SANYO installation instructions for use and maintenance instructions.
- Marine recreation vehicle and/or mobile installations of any kind.
- Alteration or improper application.
- Damage from theft, alteration, installation or improper repair by anyone other than SANYO authorized and trained technicians.
- Improper storage, packaging or transportation.
- Damage from external stress, such as falling rocks or other debris.
- Damage from environmental pollution, such as acid rain, acid damage, or acid rain.
- Damage from defects in system-related parts and components, or non-compatibility of Product(s) with system and related components.
- Damage from extreme natural conditions (earthquakes, typhoons, tornadoes, volcanic activity, flooding, tsunami, lightning, heavy snow, etc.) and fire, power surge, power failures or other unforeseen circumstances that are beyond SANYO's control.
- Damage from terrorist acts, riots, war or other man-made disasters.
- External stress or scratches that do not affect output.
- Damage due to sound, vibration, rust, scratching, or discoloration that are the result of normal wear and tear, aging or continuous use.
- Expiration of warranty, no evidence of purchase, or no proof of delivery and installation by a SANYO-authorized representative or dealer.
- Altered, removed, or illegible Product(s) serial number(s).

4. Limitation of Warranty: THE EXPRESS WARRANTIES SET FORTH HEREIN SHALL CONSTITUTE THE ONLY WARRANTIES APPLICABLE TO THE PRODUCT(S). SANYO HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, USE, OR APPLICATION, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON SANYO'S PART UNLESS SUCH OTHER WARRANTIES, OBLIGATIONS OR LIABILITIES ARE EXPRESSLY AGREED TO IN WRITING BY SANYO.

SANYO SHALL NOT BE RESPONSIBLE OR LIABLE IN ANY WAY FOR DAMAGE OR INJURY TO PERSONS OR PROPERTY OR FOR OTHER LOSS OR INJURY RESULTING FROM ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATED TO THE PRODUCT(S) INCLUDING, WITHOUT LIMITATION, ANY DEFECTS IN THE PRODUCT(S), OR PRIMA FACIE OR INSTALLATION, IN NO EVENT SHALL SANYO BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, LOSS OF USE, LOSS OF PROFITS, LOSS OF PRODUCTION, OR LOSS OF REVENUES FOR ANY REASON WHATSOEVER. SANYO'S TOTAL LIABILITY, IF ANY IN DAMAGES OR OTHERWISE, SHALL NOT EXCEED THE INVOICE VALUE PAID BY THE CUSTOMER FOR THE PRODUCT OR SERVICE FURNISHED WHICH IS THE SUBJECT OF CLAIM OR DISPUTE.

THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY IN SOME STATES THAT DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OF DAMAGES.

5. Obtaining Warranty Performance: Customers who believe they have a justified claim covered by this Limited Warranty must immediately notify an authorized SANYO representative or contact SANYO directly by writing to:

SANYO Energy U.S.A. Corporation
Attn: Solar Product Warranty Claim
2022 SANYO Avenue
San Diego, CA 92114

Customers may also contact SANYO via its website under Industrial Solar products at www.sanyo-usa.com. Claims must accompany evidence of the product purchase date by the Customer. Note that the return of any Product(s) will not be accepted by SANYO unless accompanied by a valid return material authorization and prior written authorization issued by SANYO.

6. Severability: If a part provision or clause of this Limited Warranty, or its application to any person or circumstance is held invalid, void or unenforceable, such holding shall not affect this Limited Warranty and all other parts, provisions, clauses or applications shall remain, and to this end, such other parts, provisions, clauses or applications of this Limited Warranty shall be treated as severable.

7. Disputes: The Customer may bring no action, regardless of form, arising out of or in any way connected with this Limited Warranty, more than one (1) year after the cause of action has occurred. THIS LIMITED WARRANTY GIVES THE CUSTOMER SPECIFIC LEGAL RIGHTS. CUSTOMERS MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE.

8. Replacement: Product(s) that is replaced by SANYO shall become the property of SANYO. SANYO reserves the right, at its sole option, to deliver another type of new or refurbished Product(s) that may differ in size, color, shape, model number, and/or power level.

9. Force Majeure: SANYO shall not be held responsible or liable to the Customer or any third-party arising out of any non-performance or delay in performance of any terms and conditions of sale, including this Limited Warranty, due to acts of God, war, riots, strikes, unavailability of suitable and sufficient labor, material, die, or capacity or technical or yield failures and any unforeseen event beyond its control, including, without limitation, any technological or physical event or conditions which is not reasonably known or understood at the time of the sale of the Product(s) or the claim.

EXHIBIT D

On Fri, Apr 13, 2018, 6:42 PM Tufts, Trevor <Trevor.Tufts@us.panasonic.com> wrote:

Paul,

Though we are at a disagreement, I want to thank you for your patience and understanding.

If I may expand on your analogy (Though, please forgive me if it isn't 100% accurate – I know next to nothing about vehicles), I believe it would be more accurate to say that while the paint on these Mercedes is definitely falling off, the warranty only covers the horsepower of the engine. So when we got approval to replace one Mercedes it wasn't based on the paint, but rather the dent on the hood where it seems a piston had blown.

We are obligated to provide one module at this time. Perhaps a solution to this problem could be that we send you the replacement, then while your team is out replacing the module you take the opportunity to conduct amperage readings on any amount of modules you wish. Please understand that the warranty is per-module, so we will only be able to provide replacements for those we have data for. That also means we will need to know what measurement belongs to which serial number, so if we do this then please be sure to tie the measurements to the serial numbers. Once the data is submitted I will get a second report ASAP.

I would like to know what you think.

Sincerely,

Trevor Tufts

PVCS Support Coordinator

Panasonic Eco Solutions Solar New York (PESSNY)

Tel: (503) 871-3697

8755 SW Citizens Dr, Wilsonville, OR 97070

trevor.tufts@us.panasonic.com

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From: Paul Coughlin [mailto:paul@poweroverhaul.com]

Sent: Friday, April 13, 2018 3:01 PM

To: Tufts, Trevor <Trevor.Tufts@us.panasonic.com>

Cc: Matthew Alestra <matt@poweroverhaul.com>; Oishi, Hidenori <Hidenori.Oishi@us.panasonic.com>; Megan Coughlin <megan@poweroverhaul.com>

Subject: Re: ZICCARELLO Sanyo Module warranty claim

Trevor,

I'm only suggesting that this situation is analogous to a Mercedes driving down the road with all the paint peeling off. Doesn't look good and there is a high probability (based on my experience) these panels will eventually fail. Again, from my experience in the industry with other similar situations, a premium product should be handled with premium service and it's of my opinion that's not the case here. But, I appreciate your perspective.

Paul Coughlin

Executive VP-Business Development

Power Overhaul – “Residential Solar Service Experts”
O: (855)YES-OVER ext 703

C: 914-393-1746

Paul@PowerOverhaul.com

www.poweroverhaul.com

@SolarTuneUps

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[Follow us on Twitter](#)

Los Angeles, CA & Southampton, NJ

On Fri, Apr 13, 2018 at 5:48 PM, Tufts, Trevor <Trevor.Tufts@us.panasonic.com> wrote:

Paul,

The warranty for these modules is not void. If we receive more data to base our judgement off of, we would be happy to prepare another report that includes that data.

Sincerely,

Trevor Tufts

PVCS Support Coordinator

Panasonic Eco Solutions Solar New York (PESSNY)

Tel: (503) 871-3697

8755 SW Citizens Dr, Wilsonville, OR 97070

trevor.tufts@us.panasonic.com

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From: Paul Coughlin [<mailto:paul@poweroverhaul.com>]

Sent: Friday, April 13, 2018 2:33 PM

To: Tufts, Trevor <Trevor.Tufts@us.panasonic.com>

Cc: Matthew Alestra <matt@poweroverhaul.com>; Oishi, Hidenori

<Hidenori.Oishi@us.panasonic.com>; Megan Coughlin <megan@poweroverhaul.com>

Subject: Re: ZICCARELLO Sanyo Module warranty claim

Trevor,

I must say that I'm very disappointed at Panasonic Solar's decision to overlook the fact that these modules are defective and doomed for failure. Having been in the solar industry for over 22 years, I've never seen catastrophic material degradation being handled like this. I've had many customers, distributors, etc pay a premium for Sanyo product as it was perceived to be a premium product with premium service. I most certainly don't believe that to be the truth today. No way. I'm disappointed at the way that this is being handled and I'll be sure NOT to recommend your product in the foreseeable future.

I can only hope that you will eventually recognize that this is being handled improperly and will eventually get rectified. I'm embarrassed to go back to the folks that paid 10's of thousands of dollars only to be treated like this.

Paul Coughlin

Executive VP-Business Development

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O: (855)YES-OVER ext 703

C: 914-393-1746

Paul@PowerOverhaul.com

www.poweroverhaul.com

@SolarTuneUps

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Los Angeles, CA & Southampton, NJ

On Fri, Apr 13, 2018 at 5:21 PM, Tufts, Trevor <Trevor.Tufts@us.panasonic.com> wrote:

Matthew,

Please see the attached Report of Analysis for your warranty claim.

Based on the claim form you submitted, we looked for signs of ground fault defects in the data you submitted. Since we only have photographs of the modules with no electrical data our judgement is limited. Looking through the photos, we found only one module (64BA01546) with signs of ground fault. We would like to send a replacement module to replace that one module. The replacement model will be VBHB190AA06, which is an inch taller (Thicker) with a silver frame, but it has exact length and width dimensions.

If you send me a shipping address, I can start working on getting that replacement sent over.

Thank you,

Trevor Tufts

PVCS Support Coordinator

Panasonic Eco Solutions Solar New York (PESSNY)

Tel: (503) 871-3697

8755 SW Citizens Dr, Wilsonville, OR 97070

trevor.tufts@us.panasonic.com

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From: Matthew Alestra [mailto:matt@poweroverhaul.com]

Sent: Thursday, April 05, 2018 1:33 PM

To: Tufts, Trevor <Trevor.Tufts@us.panasonic.com>

Cc: Oishi, Hidenori <Hidenori.Oishi@us.panasonic.com>; Paul Coughlin <paul@poweroverhaul.com>; Megan Coughlin <megan@poweroverhaul.com>

Subject: Re: ZICCARELLO Sanyo Module warranty claim

Any word?

Matthew Alestra
President
Power Overhaul
Solar Service Experts

Servicing NJ, PA, NY, MD, and DE

On Tue, Mar 20, 2018, 8:33 AM Matthew Alestra <matt@poweroverhaul.com> wrote:

Trevor,

The remaining serial numbers are:

64BA01551

64BA01738

See attached photos.

Sincerely,

Matthew Alestra

President
Power Overhaul
“Solar Service Experts”
(855)937-6837 x701

On Mon, Mar 19, 2018 at 11:35 AM, Tufts, Trevor <Trevor.Tufts@us.panasonic.com> wrote:

Matthew,

If that is the case, then I will just prepare what I have now for review.

Before that, were you able to find photos of those two missing modules?

Sincerely,

Trevor Tufts

PVCS Support Coordinator

Panasonic Eco Solutions Solar New York (PESSNY)

Tel: (503) 871-3697

8755 SW Citizens Dr, Wilsonville, OR 97070

trevor.tufts@us.panasonic.com

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From: Matthew Alestra [mailto:matt@poweroverhaul.com]

Sent: Monday, March 19, 2018 6:39 AM

To: Tufts, Trevor <Trevor.Tufts@us.panasonic.com>

Cc: Oishi, Hidenori <Hidenori.Oishi@us.panasonic.com>; Paul Coughlin <paul@poweroverhaul.com>; Megan Coughlin <megan@poweroverhaul.com>

Subject: Re: ZICCARELLO Sanyo Module warranty claim

Trevor,

We spent 16 hours onsite gathering the (6) photos of each module that Panasonic requires for warranty claims.

Considering we don't get compensated for submitting these warranty claims, we did not spend any more time onsite gathering electrical data.

We can definitely go back and get it, if Panasonic would be willing to cover our costs.

The homeowner bought a product that has a 20 year warranty, and they are failing. The backsheets are falling off and the modules are delaminating.

I cannot imagine that it is electrically safe to leave these modules on the roof.

The homeowner is not happy, which is our main concern.

Matthew Alestra

President
Power Overhaul
"Solar Service Experts"
(855)937-6837 x701

On Fri, Mar 16, 2018 at 5:41 PM, Tufts, Trevor <Trevor.Tufts@us.panasonic.com> wrote:

Matthew,

I apologize for the delay, I just now found the time to go through the photos you submitted.

Looking at the claim form, I see these modules are being claimed after the modules were, "causing ground faults." I assume this means the inverter was detecting ground faults. I still need to go through the photos one module after the other, but I thought I'd ask now if you took any measurements of these modules, particularly measurements of their amperage.

Looking at the photos of the array I don't see any visual defects that would suggest ground fault in these modules – which is not to say that I don't think they are ground faulting (I don't know yet), rather that I would very much suggest submitting electrical data for these

modules before I submit this claim for review. I know for a fact that if I submit this claim now, with what you've submitted so far, the QA team will ask for the electrical data.

Thank you very much for your patience with this warranty claim, and let me know what you think.

Trevor Tufts

PVCS Support Coordinator

Panasonic Eco Solutions Solar New York (PESSNY)

Tel: (503) 871-3697

8755 SW Citizens Dr, Wilsonville, OR 97070

trevor.tufts@us.panasonic.com

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From: Matthew Alestra [mailto:matt@poweroverhaul.com]

Sent: Wednesday, February 21, 2018 10:10 AM

To: Tufts, Trevor <Trevor.Tufts@us.panasonic.com>

Cc: Oishi, Hidenori <Hidenori.Oishi@us.panasonic.com>; Paul Coughlin <paul@poweroverhaul.com>; Megan Coughlin <megan@poweroverhaul.com>

Subject: RE: ZICCARELLO Sanyo Module warranty claim

Ok, thanks. Let me know if you need anything else as you review.

Matthew Alestra
President
Power Overhaul
Solar Service Experts

Servicing NJ, PA, NY, MD, and DE

On Feb 21, 2018 1:06 PM, "Tufts, Trevor" <Trevor.Tufts@us.panasonic.com> wrote:

Matthew,

I received all the info – though I will need to access the google drive folder from home. I'll forward this email to my personal address and request access from there.

Sean unfortunately is no longer working with us, so I will be your main contact for older model warranties from here on.

Thank you,

Trevor Tufts トレヴァー・タフス

PVCS Support Coordinator

Tel: [\(503\) 365-1086](tel:5033651086)

Cel: [\(503\) 871-3697](tel:5038713697)

Panasonic Eco Solutions Solar New York (PESSNY)

From: Matthew Alestra [<mailto:matt@poweroverhaul.com>]

Sent: Wednesday, February 21, 2018 10:00 AM

To: Tufts, Trevor <Trevor.Tufts@us.panasonic.com>; Oishi, Hidenori <Hidenori.Oishi@us.panasonic.com>

Cc: Paul Coughlin <paul@poweroverhaul.com>; Megan Coughlin <megan@poweroverhaul.com>

Subject: Re: ZICCARELLO Sanyo Module warranty claim

I received an undeliverable message for Sean's email.

Trevor or Hidenori, can you please confirm receipt of this warranty claim?

Matthew Alestra

President
Power Overhaul
"Solar Service Experts"
(855)937-6837 x701

On Wed, Feb 21, 2018 at 12:58 PM, Matthew Alestra <matt@poweroverhaul.com> wrote:

Sean,

I have attached a warranty claim form for homeowner Zicarello. There are 37 modules on the roof, all showing signs of delamination. Several units are causing ground faults.

Here is link to all of the photos. We took at least (4) photos of each module. If you list them alphabetically, it goes label first and then the photos of the module.

https://drive.google.com/drive/folders/1OmD0zPRIf0hJZmk432ngZHXha61Vf6_Q?usp=sharing

Let me know what else you need. Homeowner is asking for a replacement of all 37 modules.

Sincerely,

Matthew Alestra

President
Power Overhaul
"Solar Service Experts"
(855)937-6837 x701

EXHIBIT E

Rick Zicarello
7 Reynolds Avenue
Whippany, New Jersey
07981

March 5, 2019

To:

SANYO Energy (USA) Corp.
Attn: Solar Products Warranty Claim
2055 SANYO Avenue
San Diego, CA 92154

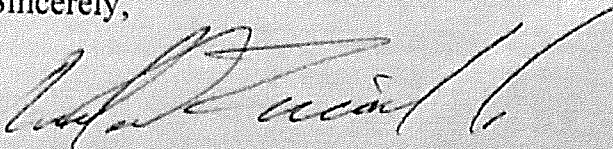
PANASONIC ECO SOLUTIONS NORTH AMERICA
Division of Panasonic Corporation of North America
Two Riverfront Plaza, 5th Floor
Newark, New Jersey 07102
Attn: Product Warranties

RE: Warranty Claim of Rick Zicarello

To Whom It May Concern:

The solar system purchased and installed at my home in 2006 consists of 37 SANYO solar panels, model HIP-200BA3. The solar panels are defective. They have discoloration manifested by white spots in the circuitry. Please consider this a performance warranty claim. Please have somebody contact me as we have concerns about the safety of these panels. We would like to have somebody from Sanyo inspect our property as soon as possible.

Sincerely,



Rick Zicarello

USPS delivery confirmation return receipt requested

EXHIBIT F

R. ZICCARIELLO
7 REYNOLDS AVENUE
WHIPPANY, NJ 07981

CERTIFIED MAIL®



7018 1830 0001 9477 6697



1000



92154

U.S. POSTAGE PAID
FOR LETTER
LAKE HIAWATHA, NJ
07034
MAR 11, 19
AMOUNT

\$6.85
R2304E105582-07

SANYO ENERGY USA CORP.
ATTN: SOLAR PRODUCTS WARRANTY CLAIM
2065 SANYO AVENUE
SAN DIEGO, CA 92154

NIXTE

911 02 1

0001 12 19

RETURN TO SENDER
INSUREE'S ADDRESS
UNABLE TO FORWARD

IA

BC: 07981125407

*1809-05339-12-45

079811254
92154-623499

EXHIBIT G

From: R Zicarello <zicarellors4@earthlink.net>
Sent: Friday, March 8, 2019 7:09 PM
To: Panasonic HIT <PanasonicHIT@us.panasonic.com>
Subject: Solar panel warranty HIP-200BA3

To whom this may concern;

I have been informed by my solar contractor that my panels have delaminated. I am concerned about the safety and power output of these panels. They are not functioning properly. Please consider this a notice of a warranty claim and a request that you come to my home to inspect the panels.

Richard Zicarello
7 Reynolds Avenue
Whippany, New Jersey 07981
862.221.8455

EXHIBIT H

From: "Anderson, Erik" <Erik.Anderson@us.panasonic.com>
Subject: RE: Solar panel warranty HIP-200BA3
Date: March 9, 2019 at 9:54:02 AM EST
To: "ziccarellors4@earthlink.net" <ziccarellors4@earthlink.net>
Cc: "Castillo, Yessica" <yessica.castillo@us.panasonic.com>, "Glaser, Daniel" <Dan.Glaser@us.panasonic.com>

Richard, I'm sorry to hear about this.

Unfortunately, Panasonic does not perform any field work. In a similar way that our TVs or heat pumps are sold through wholesale outlets, as a manufacturer of solar modules we sell our products through partners who then perform the work to install & service them when needed.

Your solar contractor should have provided you with an install warranty on your system, but in addition we have warranties on our products.

All of that documentation can be found here including the claim form and description of how to put in a warranty claim:

<https://na.panasonic.com/us/support/solar-warranty>

For our records, could you please give us the name of your solar contractor, date of install & solar module part number?

Thank you-

Erik Anderson
East Coast Solar+Storage

p 475.201.5156
Erik.Anderson@us.panasonic.com
Panasonic Eco Solutions (PESNA)
Two Riverfront Plaza, 9th Floor | Newark, NJ 07102



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